

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0042.01 Richard Sweetman x4333

HOUSE BILL 15-1043

HOUSE SPONSORSHIP

Saine and McCann,

SENATE SPONSORSHIP

Cooke and Johnston,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PENALTIES FOR DUI OFFENDERS.

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>.)

Under current law, a DUI, DUI per se, or DWAI is a misdemeanor offense. The bill makes such an offense a class 4 felony if the violation occurred: (1) After 3 or more prior convictions for DUI, DUI per se, or DWAI; vehicular homicide; vehicular assault; or any combination thereof; or (2) not more than 7 years after the first of 2 prior convictions for DUI, DUI per se, or DWAI; vehicular homicide; vehicular assault; or any combination thereof, if the violation included at least one of the following circumstances:

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.

- ! One or more persons less than 18 years of age were present in the person's vehicle at the time of the violation;
- ! In committing the violation, the person caused damage or injury to any property or persons;
- ! After committing the violation, the person fled the scene; or
- ! At the time of the violation, or within 2 hours after the violation, the person's BAC was 0.15 or higher.

Under current law, aggravated driving with a revoked license is a class 6 felony. The bill changes the penalty to a class 1 misdemeanor but requires a sentencing court to ensure that an offender spends a minimum of 60 days in the custody of a county jail.

Under current law, a person whose privilege to drive was revoked for multiple convictions for any combination of a DUI, DUI per se, or DWAI must hold an interlock-restricted license for at least one year following reinstatement prior to being eligible to obtain any other driver's license. The bill expands this period to a minimum of 2 years and a maximum of 5 years.

The bill repeals provisions relating to the crime of aggravated driving with a revoked license when the offender also commits DUI, DUI per se, or DWAI as part of the same criminal episode.

The bill makes conforming amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, 42-4-1301, **amend**
 3 (1) (a), (1) (b), and (2) (a); **repeal** (2) (a.5); and **add** (1) (j), (1) (k), and
 4 (2) (d) as follows:

5 **42-4-1301. Driving under the influence - driving while**
 6 **impaired - driving with excessive alcoholic content - definitions -**
 7 **penalties.** (1) (a) ~~It is a misdemeanor for any~~ A person who is DRIVES A
 8 MOTOR VEHICLE OR VEHICLE under the influence of alcohol or one or
 9 more drugs, or a combination of both alcohol and one or more drugs, ~~to~~
 10 ~~drive a motor vehicle or vehicle~~ COMMITS DRIVING UNDER THE
 11 INFLUENCE. DRIVING UNDER THE INFLUENCE IS A MISDEMEANOR, BUT IT
 12 IS A CLASS 4 FELONY IF:

13 (I) THE VIOLATION OCCURRED AFTER THREE OR MORE PRIOR

1 CONVICTIONS, ARISING OUT OF SEPARATE AND DISTINCT CRIMINAL
2 EPISODES, FOR DUI, DUI PER SE, OR DWAI; VEHICULAR HOMICIDE, AS
3 DESCRIBED IN SECTION 18-3-106 (1) (b), C.R.S.; VEHICULAR ASSAULT, AS
4 DESCRIBED IN SECTION 18-3-205 (1) (b), C.R.S.; OR ANY COMBINATION
5 THEREOF; OR

6 (II) THE VIOLATION OCCURRED NOT MORE THAN SEVEN YEARS
7 AFTER THE FIRST OF TWO PRIOR CONVICTIONS, TRIED AND ARISING OUT OF
8 SEPARATE AND DISTINCT CRIMINAL EPISODES, FOR DUI, DUI PER SE, OR
9 DWAI; VEHICULAR HOMICIDE, AS DESCRIBED IN SECTION 18-3-106 (1) (b),
10 C.R.S.; VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205 (1) (b),
11 C.R.S.; OR ANY COMBINATION THEREOF, AND THE VIOLATION INCLUDED
12 AT LEAST ONE OF THE FOLLOWING CIRCUMSTANCES:

13 (A) ONE OR MORE PERSONS LESS THAN EIGHTEEN YEARS OF AGE
14 WERE PRESENT IN THE PERSON'S VEHICLE AT THE TIME OF THE VIOLATION;

15 (B) IN COMMITTING THE VIOLATION, THE PERSON CAUSED DAMAGE
16 OR INJURY TO ANY PROPERTY OR PERSONS;

17 (C) AFTER COMMITTING THE VIOLATION, THE PERSON FLED THE
18 SCENE IN VIOLATION OF SECTION 42-4-1601 OR 42-4-1602; OR

19 (D) AT THE TIME OF THE VIOLATION, OR WITHIN TWO HOURS AFTER
20 THE VIOLATION, THE PERSON'S BAC WAS 0.15 OR HIGHER.

21 (b) ~~It is a misdemeanor for any~~ A person who ~~is~~ DRIVES A MOTOR
22 VEHICLE OR VEHICLE WHILE impaired by alcohol or by one or more drugs,
23 or by a combination of alcohol and one or more drugs, ~~to drive a motor~~
24 ~~vehicle or vehicle~~ COMMITS DRIVING WHILE ABILITY IMPAIRED. DRIVING
25 WHILE ABILITY IMPAIRED IS A MISDEMEANOR, BUT IT IS A CLASS 4 FELONY
26 IF:

27 (I) THE VIOLATION OCCURRED AFTER THREE OR MORE PRIOR

1 CONVICTIONS, ARISING OUT OF SEPARATE AND DISTINCT CRIMINAL
2 EPISODES, FOR DUI, DUI PER SE, OR DWAI; VEHICULAR HOMICIDE, AS
3 DESCRIBED IN SECTION 18-3-106 (1) (b), C.R.S.; VEHICULAR ASSAULT, AS
4 DESCRIBED IN SECTION 18-3-205 (1) (b), C.R.S.; OR ANY COMBINATION
5 THEREOF; OR

6 (II) THE VIOLATION OCCURRED NOT MORE THAN SEVEN YEARS
7 AFTER THE FIRST OF TWO PRIOR CONVICTIONS, ARISING OUT OF SEPARATE
8 AND DISTINCT CRIMINAL EPISODES, FOR DUI, DUI PER SE, OR DWAI;
9 VEHICULAR HOMICIDE, AS DESCRIBED IN SECTION 18-3-106 (1) (b), C.R.S.;
10 VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205 (1) (b), C.R.S.;
11 OR ANY COMBINATION THEREOF, AND THE VIOLATION INCLUDED AT LEAST
12 ONE OF THE FOLLOWING CIRCUMSTANCES:

13 (A) ONE OR MORE PERSONS LESS THAN EIGHTEEN YEARS OF AGE
14 WERE PRESENT IN THE PERSON'S VEHICLE AT THE TIME OF THE VIOLATION;

15 (B) IN COMMITTING THE VIOLATION, THE PERSON CAUSED DAMAGE
16 OR INJURY TO ANY PROPERTY OR PERSONS;

17 (C) AFTER COMMITTING THE VIOLATION, THE PERSON FLED THE
18 SCENE IN VIOLATION OF SECTION 42-4-1601 OR 42-4-1602; OR

19 (D) AT THE TIME OF THE VIOLATION, OR WITHIN TWO HOURS AFTER
20 THE VIOLATION, THE PERSON'S BAC WAS 0.15 OR HIGHER.

21 (j) FOR THE PURPOSES OF THIS SECTION, A PERSON IS DEEMED TO
22 HAVE A PRIOR CONVICTION FOR DUI, DUI PER SE, OR DWAI; VEHICULAR
23 HOMICIDE, AS DESCRIBED IN SECTION 18-3-106 (1) (b), C.R.S.; OR
24 VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205 (1) (b), C.R.S.,
25 IF THE PERSON HAS BEEN CONVICTED UNDER THE LAWS OF THIS STATE OR
26 UNDER THE LAWS OF ANY OTHER STATE, THE UNITED STATES, OR ANY
27 TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES, OF AN

1 ACT THAT, IF COMMITTED WITHIN THIS STATE, WOULD CONSTITUTE ANY OF
2 THESE OFFENSES. THE PROSECUTION SHALL SET FORTH SUCH PRIOR
3 CONVICTIONS IN THE INDICTMENT OR INFORMATION.

4 (k) (I) IF A DEFENDANT IS CONVICTED OF A CLASS 4 FELONY
5 PURSUANT TO THIS SECTION, THE COURT SHALL SENTENCE THE PERSON IN
6 ACCORDANCE WITH THE PROVISIONS OF SECTIONS 18-1.3-401, C.R.S.

7 (II) (A) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH
8 (I) OF THIS PARAGRAPH (k), BEFORE THE IMPOSITION OF ANY SENTENCE TO
9 THE DEPARTMENT OF CORRECTIONS FOR A FELONY DUI, DUI PER SE, OR
10 DWAI OFFENSE, AT SENTENCING OR AT RESENTENCING AFTER A
11 REVOCATION OF PROBATION OR A COMMUNITY CORRECTIONS SENTENCE,
12 THE COURT SHALL CONSIDER ALL THE FACTORS DESCRIBED IN
13 SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (II).

14 (B) IF THE COURT SENTENCES THE DEFENDANT TO THE
15 DEPARTMENT OF CORRECTIONS FOR A FELONY DUI, DUI PER SE, OR DWAI
16 OFFENSE, IT MUST DETERMINE THAT INCARCERATION IS THE MOST
17 SUITABLE OPTION GIVEN THE FACTS AND CIRCUMSTANCES OF THE CASE,
18 INCLUDING THE DEFENDANT'S WILLINGNESS TO PARTICIPATE IN
19 TREATMENT. ADDITIONALLY, THE COURT SHALL CONSIDER WHETHER ALL
20 OTHER REASONABLE AND APPROPRIATE SANCTIONS AND RESPONSES TO
21 THE VIOLATION THAT ARE AVAILABLE TO THE COURT HAVE BEEN
22 EXHAUSTED, DO NOT APPEAR LIKELY TO BE SUCCESSFUL IF TRIED, OR
23 PRESENT AN UNACCEPTABLE RISK TO PUBLIC SAFETY.

24 (2) (a) ~~It is a misdemeanor for any~~ A person to ~~drive~~ WHO DRIVES
25 a motor vehicle or vehicle when the person's BAC is 0.08 or more at the
26 time of driving or within two hours after driving COMMITS DUI PER SE.
27 During a trial, if the state's evidence raises the issue, or if a defendant

1 presents some credible evidence, that the defendant consumed alcohol
2 between the time that the defendant stopped driving and the time that
3 testing occurred, such issue shall be an affirmative defense, and the
4 prosecution must establish beyond a reasonable doubt that the minimum
5 0.08 blood or breath alcohol content required in this paragraph (a) was
6 reached as a result of alcohol consumed by the defendant before the
7 defendant stopped driving. DUI PER SE IS A MISDEMEANOR, BUT IT IS A
8 CLASS 4 FELONY IF:

9 (I) THE VIOLATION OCCURRED AFTER THREE OR MORE PRIOR
10 CONVICTIONS, ARISING OUT OF SEPARATE AND DISTINCT CRIMINAL
11 EPISODES, FOR DUI, DUI PER SE, OR DWAI; VEHICULAR HOMICIDE, AS
12 DESCRIBED IN SECTION 18-3-106 (1) (b), C.R.S.; VEHICULAR ASSAULT, AS
13 DESCRIBED IN SECTION 18-3-205 (1) (b), C.R.S.; OR ANY COMBINATION
14 THEREOF; OR

15 (II) THE VIOLATION OCCURRED NOT MORE THAN SEVEN YEARS
16 AFTER THE FIRST OF TWO PRIOR CONVICTIONS, ARISING OUT OF SEPARATE
17 AND DISTINCT CRIMINAL EPISODES, FOR DUI, DUI PER SE, OR DWAI;
18 VEHICULAR HOMICIDE, AS DESCRIBED IN SECTION 18-3-106 (1) (b), C.R.S.;
19 VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205 (1) (b), C.R.S.;
20 OR ANY COMBINATION THEREOF, AND THE VIOLATION INCLUDED AT LEAST
21 ONE OF THE FOLLOWING CIRCUMSTANCES:

22 (A) ONE OR MORE PERSONS LESS THAN EIGHTEEN YEARS OF AGE
23 WERE PRESENT IN THE PERSON'S VEHICLE AT THE TIME OF THE VIOLATION;

24 (B) IN COMMITTING THE VIOLATION, THE PERSON CAUSED DAMAGE
25 OR INJURY TO ANY PROPERTY OR PERSONS;

26 (C) AFTER COMMITTING THE VIOLATION, THE PERSON FLED THE
27 SCENE IN VIOLATION OF SECTION 42-4-1601 OR 42-4-1602; OR

1 (D) AT THE TIME OF THE VIOLATION, OR WITHIN TWO HOURS AFTER
2 THE VIOLATION, THE PERSON'S BAC WAS 0.15 OR HIGHER.

3 (a.5) ~~(F) It is a class A traffic infraction for any person under~~
4 ~~twenty-one years of age to drive a motor vehicle or vehicle when the~~
5 ~~person's BAC, as shown by analysis of the person's breath, is at least 0.02~~
6 ~~but not more than 0.05 at the time of driving or within two hours after~~
7 ~~driving. The court, upon sentencing a defendant pursuant to this~~
8 ~~subparagraph (F), may, in addition to any penalty imposed under a class~~
9 ~~A traffic infraction, order that the defendant perform up to twenty-four~~
10 ~~hours of useful public service, subject to the conditions and restrictions~~
11 ~~of section 18-1.3-507, C.R.S., and may further order that the defendant~~
12 ~~submit to and complete an alcohol evaluation or assessment, an alcohol~~
13 ~~education program, or an alcohol treatment program at such defendant's~~
14 ~~own expense.~~

15 ~~(H) A second or subsequent violation of this paragraph (a.5) shall~~
16 ~~be a class 2 traffic misdemeanor.~~

17 (d) (I) IT IS A CLASS A TRAFFIC INFRACTION FOR ANY PERSON
18 UNDER TWENTY-ONE YEARS OF AGE TO DRIVE A MOTOR VEHICLE OR
19 VEHICLE WHEN THE PERSON'S BAC, AS SHOWN BY ANALYSIS OF THE
20 PERSON'S BREATH, IS AT LEAST 0.02 BUT NOT MORE THAN 0.05 AT THE
21 TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING. THE COURT,
22 UPON SENTENCING A DEFENDANT PURSUANT TO THIS SUBPARAGRAPH (I),
23 MAY ORDER, IN ADDITION TO ANY PENALTY IMPOSED UNDER A CLASS A
24 TRAFFIC INFRACTION, THAT THE DEFENDANT PERFORM UP TO
25 TWENTY-FOUR HOURS OF USEFUL PUBLIC SERVICE, SUBJECT TO THE
26 CONDITIONS AND RESTRICTIONS OF SECTION 18-1.3-507, C.R.S., AND MAY
27 FURTHER ORDER THAT THE DEFENDANT SUBMIT TO AND COMPLETE AN

1 ALCOHOL EVALUATION OR ASSESSMENT, AN ALCOHOL EDUCATION
2 PROGRAM, OR AN ALCOHOL TREATMENT PROGRAM AT SUCH DEFENDANT'S
3 OWN EXPENSE.

4 (II) A SECOND OR SUBSEQUENT VIOLATION OF THIS PARAGRAPH (d)
5 IS A CLASS 2 TRAFFIC MISDEMEANOR.

6 **SECTION 2.** In Colorado Revised Statutes, 42-4-1307, **amend**
7 (2), (5) (a) introductory portion, (5) (b) introductory portion, (6) (a)
8 introductory portion, (7) (a), (7) (b) (V), (7) (c), (8), (9) (a), and (15)
9 introductory portion; and **add** (6) (c) as follows:

10 **42-4-1307. Penalties for traffic offenses involving alcohol and**
11 **drugs - legislative declaration - definitions - repeal. (2) Definitions.**

12 As used in this section, unless the context otherwise requires:

13 (a) "APPROVED IGNITION INTERLOCK DEVICE" HAS THE SAME
14 MEANING AS SET FORTH IN SECTION 42-2-132.5.

15 ~~(a)~~ (b) "Conviction" means a verdict of guilty by a judge or jury
16 or a plea of guilty or nolo contendere that is accepted by the court for an
17 offense or adjudication for an offense that would constitute a criminal
18 offense if committed by an adult. "Conviction" also includes having
19 received a deferred judgment and sentence or deferred adjudication;
20 except that a person shall not be deemed to have been convicted if the
21 person has successfully completed a deferred sentence or deferred
22 adjudication.

23 ~~(b)~~ (c) "Driving under the influence" or "DUI" means driving a
24 motor vehicle or vehicle when a person has consumed alcohol or one or
25 more drugs, or a combination of alcohol and one or more drugs, that
26 affects the person to a degree that the person is substantially incapable,
27 either mentally or physically, or both mentally and physically, of

1 exercising clear judgment, sufficient physical control, or due care in the
2 safe operation of a vehicle.

3 (e) (d) "Driving while ability impaired" or "DWAI" means driving
4 a motor vehicle or vehicle when a person has consumed alcohol or one or
5 more drugs, or a combination of both alcohol and one or more drugs, that
6 affects the person to the slightest degree so that the person is less able
7 than the person ordinarily would have been, either mentally or physically,
8 or both mentally and physically, to exercise clear judgment, sufficient
9 physical control, or due care in the safe operation of a vehicle.

10 (d) (e) "UDD" shall have the same meaning as provided in section
11 42-1-102 (109.7).

12 (5) **Second offenses.** (a) Except as otherwise provided in
13 subsection (6) of this section, a person who is convicted of DUI, DUI per
14 se, or DWAI who, at the time of sentencing, has a prior conviction of
15 DUI, DUI per se, DWAI, vehicular homicide pursuant to section
16 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205
17 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to
18 section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), AS THAT CRIME EXISTED
19 BEFORE THE EFFECTIVE DATE OF HOUSE BILL 15-____, AS ENACTED IN
20 2015, or driving while the person's driver's license was under restraint
21 pursuant to section 42-2-138 (1) (d), ~~shall~~ MUST be punished by:

22 (b) If a person is convicted of DUI, DUI per se, or DWAI and the
23 violation occurred less than five years after the date of a previous
24 violation for which the person was convicted of DUI, DUI per se, DWAI,
25 vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular
26 assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving
27 with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1)

1 (b) (I) (B), AS THAT CRIME EXISTED BEFORE THE EFFECTIVE DATE OF
2 HOUSE BILL 15-____, AS ENACTED IN 2015, or driving while the person's
3 driver's license was under restraint pursuant to section 42-2-138 (1) (d),
4 the court ~~shall~~ DOES not have discretion to employ any sentencing
5 alternatives described in section 18-1.3-106, C.R.S., during the minimum
6 period of imprisonment described in subparagraph (I) of paragraph (a) of
7 this subsection (5); except that a court may allow the person to participate
8 in a program pursuant to section 18-1.3-106 (1) (a) (II), (1) (a) (IV), or (1)
9 (a) (V), C.R.S., only if the program is available through the county in
10 which the person is imprisoned and only for the purpose of:

11 (6) **Third and subsequent offenses.** (a) EXCEPT AS PROVIDED IN
12 SECTION 42-4-1301 (1) (a) (I), (1) (a) (II), (1) (b) (I), (1) (b) (II), (2) (a)
13 (I), AND (2) (a) (II), a person who is convicted of DUI, DUI per se, or
14 DWAI who, at the time of sentencing, has two or more prior convictions
15 of DUI, DUI per se, DWAI, vehicular homicide pursuant to section
16 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205
17 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to
18 section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), AS THAT CRIME EXISTED
19 BEFORE THE EFFECTIVE DATE OF HOUSE BILL 15-____, AS ENACTED IN
20 2015, or driving while the person's driver's license was under restraint
21 pursuant to section 42-2-138 (1) (d) ~~shall~~ MUST be punished by:

22 (c) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT
23 MAY SENTENCE A PERSON WHO IS CONVICTED OF DUI, DUI PER SE, OR
24 DWAI TO THE CUSTODY OF A COMMUNITY CORRECTIONS FACILITY FOR
25 SOME PORTION OF THE PERSON'S SENTENCE IF:

26 (I) AT THE TIME OF SENTENCING, THE PERSON HAS TWO PRIOR
27 CONVICTIONS OF DUI, DUI PER SE, DWAI, VEHICULAR HOMICIDE

1 PURSUANT TO SECTION 18-3-106 (1) (b), C.R.S., OR VEHICULAR ASSAULT
2 PURSUANT TO SECTION 18-3-205 (1) (b), C.R.S.;

3 (II) THE FIRST OF THE PERSON'S TWO PRIOR CONVICTIONS WAS
4 BASED ON A VIOLATION THAT OCCURRED NOT MORE THAN SEVEN YEARS
5 BEFORE THE VIOLATION FOR WHICH THE PERSON IS BEING SENTENCED; AND

6 (III) THE VIOLATION FOR WHICH THE PERSON IS BEING SENTENCED
7 DID NOT INCLUDE ANY OF THE CIRCUMSTANCES DESCRIBED IN SECTION
8 42-4-1301 (1) (a) (II), 42-4-1301 (1) (b) (II), OR 42-4-1301 (2) (a) (II).

9 (7) **Probation-related penalties.** When a person is sentenced to
10 a period of probation pursuant to subparagraph (IV) of paragraph (a) of
11 subsection (5) of this section or subparagraph (IV) of paragraph (a) of
12 subsection (6) of this section:

13 (a) The court shall impose ~~in addition to any other condition of~~
14 ~~probation~~, a sentence to one year of imprisonment in the county jail,
15 which sentence ~~shall~~ MUST be suspended, and against which sentence the
16 person shall not receive credit for any period of imprisonment to which
17 he or she is sentenced pursuant to subparagraph (I) of paragraph (a) of
18 subsection (5) of this section or subparagraph (I) of paragraph (a) of
19 subsection (6) of this section;

20 (b) The court:

21 (V) May require the person to use an approved ignition interlock
22 device ~~as defined in section 42-2-132.5 (9) (a)~~, during the period of
23 probation at the person's own expense;

24 (c) (I) ~~The court may impose all or part of the suspended sentence~~
25 ~~described in subparagraph (IV) of paragraph (a) of subsection (5) of this~~
26 ~~section or subparagraph (IV) of paragraph (a) of subsection (6) of this~~
27 ~~section at any time during the period of probation if the person violates~~

1 ~~a condition of his or her probation. During the period of imprisonment,~~
2 ~~the person shall continue serving the probation sentence with no reduction~~
3 ~~in time for the sentence to probation. A cumulative period of~~
4 ~~imprisonment imposed pursuant to this paragraph (c) shall not exceed one~~
5 ~~year.~~ IN IMPOSING A SENTENCE OF IMPRISONMENT PURSUANT TO
6 PARAGRAPH (a) OF THIS SUBSECTION (7), THE COURT SHALL CONSIDER THE
7 NATURE OF THE VIOLATION, THE REPORT OR TESTIMONY OF THE
8 PROBATION DEPARTMENT, THE IMPACT ON PUBLIC SAFETY, THE PROGRESS
9 OF THE PERSON IN ANY COURT-ORDERED ALCOHOL AND DRUG DRIVING
10 SAFETY EDUCATION OR TREATMENT PROGRAM, AND ANY OTHER
11 INFORMATION THAT MAY ASSIST THE COURT IN PROMOTING THE PERSON'S
12 COMPLIANCE WITH THE CONDITIONS OF HIS OR HER PROBATION.

13 (II) ~~In imposing a sentence of imprisonment pursuant to~~
14 ~~subparagraph (f) of this paragraph (c), the court shall consider the nature~~
15 ~~of the violation, the report or testimony of the probation department, the~~
16 ~~impact on public safety, the progress of the person in any court-ordered~~
17 ~~alcohol and drug driving safety education or treatment program, and any~~
18 ~~other information that may assist the court in promoting the person's~~
19 ~~compliance with the conditions of his or her probation.~~ Any imprisonment
20 imposed upon a person by the court pursuant to ~~subparagraph (f) of this~~
21 ~~paragraph (c) shall~~ PARAGRAPH (a) OF THIS SUBSECTION (7) MUST be
22 imposed in a manner that promotes the person's compliance with the
23 conditions of his or her probation and not merely as a punitive measure.

24 (8) **Ignition interlock devices.** In sentencing a person pursuant
25 to this section, courts are encouraged to require the person to use an
26 approved ignition interlock device ~~as defined in section 42-2-132.5 (9)~~
27 (a), as a condition of bond, probation, and participation in programs

1 pursuant to section 18-1.3-106, C.R.S.

2 (9) **Previous convictions.** (a) For the purposes of subsections (5)
3 and (6) of this section, a person ~~shall be~~ IS deemed to have a previous
4 conviction for DUI, DUI per se, DWAI, vehicular homicide pursuant to
5 section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section
6 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license
7 pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), AS THAT
8 CRIME EXISTED BEFORE THE EFFECTIVE DATE OF HOUSE BILL 15-____, AS
9 ENACTED IN 2015, or driving while the person's driver's license was under
10 restraint pursuant to section 42-2-138 (1) (d), if the person has been
11 convicted under the laws of this state or under the laws of any other state,
12 the United States, or any territory subject to the jurisdiction of the United
13 States, of an act that, if committed within this state, would constitute the
14 offense of DUI, DUI per se, DWAI, vehicular homicide pursuant to
15 section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section
16 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license
17 pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), AS THAT
18 CRIME EXISTED BEFORE THE EFFECTIVE DATE OF HOUSE BILL 15-____, AS
19 ENACTED IN 2015, or driving while the person's driver's license was under
20 restraint pursuant to section 42-2-138 (1) (d).

21 (15) If a defendant is convicted of aggravated driving with a
22 revoked license based upon the commission of DUI, DUI per se, or
23 DWAI pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), AS
24 THAT CRIME EXISTED BEFORE THE EFFECTIVE DATE OF THIS HOUSE BILL
25 15-____, AS ENACTED IN 2015:

26 **SECTION 3.** In Colorado Revised Statutes, 42-2-132.5, **amend**
27 (1) as follows:

1 **42-2-132.5. Mandatory and voluntary restricted licenses**
2 **following alcohol convictions - rules. (1) Persons required to hold an**

3 **interlock-restricted license.** (a) The following persons shall be required
4 to hold an interlock-restricted license pursuant to this section for at least
5 one year following reinstatement prior to being eligible to obtain any
6 other driver's license issued under this article:

7 ~~(a) A person whose privilege to drive was revoked for multiple~~
8 ~~convictions for any combination of a DUI, DUI per se, or DWAI pursuant~~
9 ~~to section 42-2-125 (1) (g) (I) or (1) (i);~~

10 ~~(b) (I) A person whose license has been revoked for excess BAC~~
11 ~~pursuant to the provisions of section 42-2-126 when the person's BAC~~
12 ~~was 0.15 or more at the time of driving or within two hours after driving~~
13 ~~or whose driving record otherwise indicates a designation of persistent~~
14 ~~drunk driver as defined in section 42-1-102 (68.5);~~

15 ~~(c) (II) A person whose privilege to drive was revoked as an~~
16 ~~habitual offender under section 42-2-203 in which the revocation was due~~
17 ~~in part to a DUI, DUI per se, or DWAI conviction; or~~

18 ~~(d) (III) A person whose privilege to drive was revoked for~~
19 ~~interlock circumvention pursuant to paragraph (a) or (b) of subsection (7)~~
20 ~~of this section.~~

21 (b) A PERSON WHOSE PRIVILEGE TO DRIVE WAS REVOKED FOR
22 MULTIPLE CONVICTIONS FOR ANY COMBINATION OF A DUI, DUI PER SE, OR
23 DWAI PURSUANT TO SECTION 42-2-125 (1) (g) (I) OR (1) (i) SHALL HOLD
24 AN INTERLOCK-RESTRICTED LICENSE PURSUANT TO THIS SECTION FOR AT
25 LEAST TWO YEARS, BUT NOT MORE THAN FIVE YEARS, FOLLOWING
26 REINSTATEMENT PRIOR TO BEING ELIGIBLE TO OBTAIN ANY OTHER
27 DRIVER'S LICENSE ISSUED UNDER THIS ARTICLE.

1 **SECTION 4.** In Colorado Revised Statutes, 42-2-206, **amend** (1)
2 (b) (II) and (1) (b) (III) introductory portion; and **repeal** (1) (b) (I) (A)
3 and (1) (b) (I) (B) as follows:

4 **42-2-206. Driving after revocation prohibited.** (1) (b) (I) A
5 person commits the crime of aggravated driving with a revoked license
6 if he or she is found to be an habitual offender and thereafter operates a
7 motor vehicle in this state while the revocation of the department
8 prohibiting such operation is in effect and, as a part of the same criminal
9 episode, also commits any of the following offenses:

10 (A) ~~DUI or DUI per se;~~

11 (B) ~~DWAI;~~

12 (II) Aggravated driving with a revoked license is a ~~class 6 felony,~~
13 ~~punishable as provided in section 18-1.3-401, C.R.S.~~ CLASS 1
14 MISDEMEANOR, PUNISHABLE AS PROVIDED IN SECTION 18-1.3-501, C.R.S.;
15 EXCEPT THAT, A COURT SHALL SENTENCE THE OFFENDER TO A
16 MANDATORY MINIMUM TERM OF IMPRISONMENT OF SIXTY DAYS IN THE
17 CUSTODY OF A COUNTY JAIL.

18 (III) If a defendant is convicted of aggravated driving with a
19 revoked license based upon the commission of DUI, DUI per se, or
20 DWAI pursuant to sub-subparagraph (A) or (B) of subparagraph (I) of
21 this paragraph (b), AS THAT CRIME EXISTED BEFORE THE EFFECTIVE DATE
22 OF HOUSE BILL 15-____, AS ENACTED IN 2015:

23 **SECTION 5.** In Colorado Revised Statutes, 42-1-102, **amend**
24 (109.7) as follows:

25 **42-1-102. Definitions.** As used in articles 1 to 4 of this title,
26 unless the context otherwise requires:

27 (109.7) "UDD" means underage drinking and driving, and use of

1 the term shall incorporate by reference the offense described in ~~section~~
2 ~~42-4-1301 (2) (a.5)~~ SECTION 42-4-1301 (2) (d).

3 **SECTION 6.** In Colorado Revised Statutes, 42-2-125, **amend**
4 (2.5) introductory portion as follows:

5 **42-2-125. Mandatory revocation of license and permit.**

6 (2.5) The period of revocation under paragraph (g.5) of subsection (1) of
7 this section for a person who is less than twenty-one years of age at the
8 time of the offense and who is convicted of driving with an alcohol
9 content of at least 0.02 but not more than 0.05 under ~~section 42-4-1301~~
10 ~~(2) (a.5)~~ SECTION 42-4-1301 (2) (d) is as follows:

11 **SECTION 7.** In Colorado Revised Statutes, 42-4-1701, **amend**
12 (4) (a) (I) (N) and (4) (f) (I) as follows:

13 **42-4-1701. Traffic offenses and infractions classified -**
14 **penalties - penalty and surcharge schedule - repeal.** (4) (a) (I) Except
15 as provided in paragraph (c) of subsection (5) of this section, every
16 person who is convicted of, who admits liability for, or against whom a
17 judgment is entered for a violation of any provision of this title to which
18 paragraph (a) or (b) of subsection (5) of this section apply shall be fined
19 or penalized, and have a surcharge levied in accordance with sections
20 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., in accordance with
21 the penalty and surcharge schedule set forth in sub-subparagraphs (A) to
22 (P) of this subparagraph (I); or, if no penalty or surcharge is specified in
23 the schedule, the penalty for class A and class B traffic infractions is
24 fifteen dollars, and the surcharge is four dollars. These penalties and
25 surcharges apply whether the defendant acknowledges the defendant's
26 guilt or liability in accordance with the procedure set forth by paragraph
27 (a) of subsection (5) of this section, is found guilty by a court of

1 competent jurisdiction, or has judgment entered against the defendant by
 2 a county court magistrate. Penalties and surcharges for violating specific
 3 sections are as follows:

4 (N) **Other offenses:**

5	42-4-1301 (2)(a.5) 42-4-1301 (2)(d)	\$ 100.00	\$ 16.00
6	42-4-1305	50.00	16.00
7	42-4-1305.5 (2)	50.00	7.80
8	42-4-1402	150.00	16.00
9	42-4-1403	30.00	6.00
10	42-4-1404	15.00	6.00
11	42-4-1406	35.00	10.00
12	42-4-1407 (3)(a)	35.00	10.00
13	42-4-1407 (3)(b)	100.00	30.00
14	42-4-1407 (3)(c)	500.00	200.00
15	42-4-314	35.00	10.00
16	42-4-1408	15.00	6.00
17	42-4-1414 (2)(a)	500.00	156.00
18	42-4-1414 (2)(b)	1,000.00	312.00
19	42-4-1414 (2)(c)	5,000.00	1,560.00
20	42-4-1416 (3)	75.00	4.00
21	42-20-109 (2)	250.00	66.00

22 (f) (I) In addition to the surcharge specified in sub-subparagraph
 23 (N) of subparagraph (I) of paragraph (a) of this subsection (4), ~~an~~
 24 ~~additional~~ THE COURT SHALL ASSESS A surcharge of five dollars ~~shall be~~
 25 ~~assessed~~ for a violation of ~~section 42-4-1301 (2) (a.5)~~ SECTION 42-4-1301
 26 (2) (d). Moneys collected pursuant to this paragraph (f) ~~shall~~ MUST be
 27 transmitted to the state treasurer who shall deposit such moneys in the

1 rural alcohol and substance abuse cash fund created in section 27-80-117
2 (3), C.R.S., within fourteen days after the end of each quarter, to be used
3 for the purposes set forth in section 27-80-117, C.R.S.

4 **SECTION 8.** In Colorado Revised Statutes, 42-2-126, **amend** (4)
5 (d) (II) (A) as follows:

6 **42-2-126. Revocation of license based on administrative**
7 **determination.** (4) **Multiple restraints and conditions on driving**
8 **privileges.** (d) (II) (A) If a person was determined to be driving with
9 excess BAC and the person had a BAC that was 0.15 or more or if the
10 person's driving record otherwise indicates a designation as a persistent
11 drunk driver as defined in section 42-1-102 (68.5), the department shall
12 require the person to complete a level II alcohol and drug education and
13 treatment program certified by the unit in the department of human
14 services that administers behavioral health programs and services,
15 including those related to mental health and substance abuse, pursuant to
16 section 42-4-1301.3 as a condition to restoring driving privileges to the
17 person and, upon the restoration of driving privileges, shall require the
18 person to hold a restricted license requiring the use of an ignition
19 interlock device pursuant to ~~section 42-2-132.5 (1) (b)~~ SECTION
20 42-2-132.5 (1) (a) (II).

21 **SECTION 9.** In Colorado Revised Statutes, 42-2-132, **amend** (2)
22 (a) (II) (B) as follows:

23 **42-2-132. Period of suspension or revocation.** (2) (a) (II) (B) If
24 the person was determined to be in violation of section 42-2-126 (3) (a)
25 and the person had a BAC that was 0.15 or more at the time of driving or
26 within two hours after driving, or if the person's driving record otherwise
27 indicates a designation as a persistent drunk driver as defined in section

1 42-1-102 (68.5), the department shall require the person to complete a
2 level II alcohol and drug education and treatment program certified by the
3 unit in the department of human services that administers behavioral
4 health programs and services, including those related to mental health and
5 substance abuse, pursuant to section 42-4-1301.3, and, upon the
6 restoration of driving privileges, shall require the person to hold a
7 restricted license requiring the use of an ignition interlock device
8 pursuant to ~~section 42-2-132.5 (1) (b)~~ SECTION 42-2-132.5 (1) (a) (II).

9 **SECTION 10. Potential appropriation.** Pursuant to section
10 2-2-703, C.R.S., any bill that results in a net increase in periods of
11 imprisonment in the state correctional facilities must include an
12 appropriation of moneys that is sufficient to cover any increased capital
13 construction and operational costs for the first five fiscal years in which
14 there is a fiscal impact. Because this act may increase periods of
15 imprisonment, this act may require a five-year appropriation.

16 **SECTION 11. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
18 the expiration of the ninety-day period after final adjournment of the
19 general assembly (August 5, 2015, if adjournment sine die is on May 6,
20 2015); except that, if a referendum petition is filed pursuant to section 1
21 (3) of article V of the state constitution against this act or an item, section,
22 or part of this act within such period, then the act, item, section, or part
23 will not take effect unless approved by the people at the general election
24 to be held in November 2016 and, in such case, will take effect on the
25 date of the official declaration of the vote thereon by the governor.

26 (2) This act applies to offenses committed on or after the
27 applicable effective date of this act.