

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0646.01 Richard Sweetman x4333

HOUSE BILL 13-1114

HOUSE SPONSORSHIP

Waller and Fields,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING PENALTIES FOR PERSONS WHO DRIVE WHILE UNDER THE
102 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 DUI prosecution, if at the time of driving or within a reasonable time thereafter, the driver's blood contains 5 nanograms or more of delta 9-tetrahydrocannabinol per milliliter in whole blood, as shown by analysis of the defendant's blood, such fact gives rise to a permissible inference that the defendant was under the influence of one

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.

or more drugs.

Under current law, in any prosecution for vehicular homicide or vehicular assault, if at the time of the commission of the alleged offense, or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, there was 0.08 or more grams of alcohol per 100 milliliters of blood, or if there was at such time 0.08 or more grams of alcohol per 210 liters of breath, it is presumed that the defendant was under the influence of alcohol. The bill removes this presumption and states instead that such fact gives rise to a permissible inference that the defendant was under the influence of alcohol.

The bill removes instances of the term "habitual user" from the traffic code.

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) (d), (2) (b), (4), and (6) (e); **repeal** (1) (c); and **add** (6) (a) (IV) as
4 follows:

5 **42-4-1301. Driving under the influence - driving while**
6 **impaired - driving with excessive alcoholic content - definitions -**
7 **penalties.** (1) (c) ~~It is a misdemeanor for any person who is an habitual~~
8 ~~user of any controlled substance defined in section 18-18-102 (5), C.R.S.,~~
9 ~~to drive a motor vehicle, vehicle, or low-power scooter in this state.~~

10 (d) ~~For the purposes of this subsection (1) AS USED IN THIS~~
11 ~~SECTION, one or more drugs shall mean all substances defined as a MEANS~~
12 ~~ANY drug, AS DEFINED in section 27-80-203 (13), C.R.S., and all~~
13 ~~controlled substances ANY CONTROLLED SUBSTANCE, AS defined in~~
14 ~~section 18-18-102 (5), C.R.S., and glue-sniffing, aerosol inhalation, and~~
15 ~~the inhalation of any INHALED GLUE, AEROSOL, OR other toxic vapor or~~
16 ~~vapors, AS DEFINED IN SECTION 18-18-412, C.R.S.~~

17 (2) (b) In any prosecution for the offense of DUI per se, the
18 defendant shall be entitled to offer direct and circumstantial evidence to
19 show that there is a disparity between what ~~the~~ ANY tests show and other

1 facts so that the trier of fact could infer that the tests were in some way
2 defective or inaccurate. Such evidence may include testimony of
3 nonexpert witnesses relating to the absence of any or all of the common
4 symptoms or signs of intoxication for the purpose of impeachment of the
5 accuracy of the analysis of the person's blood or breath.

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

14 (6) (a) In any prosecution for DUI or DWAI, the defendant's BAC
15 at the time of the commission of the alleged offense or within a
16 reasonable time thereafter gives rise to the following presumptions or
17 inferences:

18 (IV) IF AT SUCH TIME THE DRIVER'S BLOOD CONTAINED FIVE
19 NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL PER
20 MILLILITER IN WHOLE BLOOD, AS SHOWN BY ANALYSIS OF THE
21 DEFENDANT'S BLOOD, SUCH FACT GIVES RISE TO A PERMISSIBLE INFERENCE
22 THAT THE DEFENDANT WAS UNDER THE INFLUENCE OF ONE OR MORE
23 DRUGS.

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

1 homicide pursuant to section 18-3-105, C.R.S., vehicular homicide
2 pursuant to section 18-3-106 (1) (b), C.R.S., assault in the third degree
3 pursuant to section 18-3-204, C.R.S., or vehicular assault pursuant to
4 section 18-3-205 (1) (b), C.R.S.

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

7 **18-3-106. Vehicular homicide.** (1) (b) (II) For the purposes of
8 this subsection (1), one or more drugs ~~shall mean all substances defined~~
9 ~~as a~~ MEANS ANY drug, AS DEFINED in section 27-80-203 (13), C.R.S., ~~and~~
10 ~~all controlled substances~~ ANY CONTROLLED SUBSTANCE, AS defined in
11 section 18-18-102 (5), and ~~glue-sniffing, aerosol inhalation, or the~~
12 ~~inhalation of~~ any INHALED GLUE, AEROSOL, OR other toxic vapor or
13 vapors, as defined in section 18-18-412.

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

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

24 **SECTION 3.** 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 a~~

1 MEANS ANY drug, AS DEFINED in section 27-80-203 (13), C.R.S., ~~and all~~
2 ~~controlled substances~~ ANY CONTROLLED SUBSTANCE, AS defined in
3 section 18-18-102 (5), and ~~glue-sniffing, aerosol inhalation, or the~~
4 ~~inhalation~~ of any INHALED GLUE, AEROSOL, OR other toxic vapor or
5 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.

16 **SECTION 4.** In Colorado Revised Statutes, 42-1-102, **repeal**
17 (41.7) as follows:

18 **42-1-102. Definitions.** As used in articles 1 to 4 of this title,
19 unless the context otherwise requires:

20 (41.7) "~~Habitual user~~" ~~shall incorporate by reference the offense~~
21 ~~described in section 42-4-1301 (1) (c).~~

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

24 **42-2-121. Records to be kept by department - admission of**
25 **records in court.** (2) (b) The department shall also keep a separate file
26 of all abstracts of court records of dismissals of DUI, DUI per se, DWAI,
27 ~~habitual user~~, and UDD charges and all abstracts of records in cases

1 where the original charges were for DUI, DUI per se, DWAI, ~~habitual~~
2 ~~user~~, and UDD and the convictions were for nonalcohol- or
3 nondrug-related traffic offenses. This file shall be made available only to
4 criminal justice agencies, as defined in section 24-72-302 (3), C.R.S.

5 (5) (a) Upon application by a person, the department shall
6 expunge all records concerning a conviction of a person for UDD with a
7 BAC of at least 0.02 but not more than 0.05 and any records concerning
8 an administrative determination resulting in a revocation under section
9 42-2-126 (3) (b) or (3) (e) if:

10 (III) The person has not been convicted for any other DUI, DUI
11 per se, DWAI, ~~habitual user~~, or UDD offense that was committed while
12 such person was under twenty-one years of age and is not subject to any
13 other administrative determination resulting in a revocation under section
14 42-2-126 for any other occurrence while such person was under
15 twenty-one years of age;

16 **SECTION 6.** In Colorado Revised Statutes, **amend** 42-2-129 as
17 follows:

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

1 the surrender of the license or permit. Any person who does not
2 immediately surrender the license or permit to the court, except for good
3 cause shown, commits a class 2 misdemeanor traffic offense.

4 **SECTION 7.** In Colorado Revised Statutes, 42-2-125, **amend** (1)
5 (b), (1) (g), and (1) (i) as follows:

6 **42-2-125. Mandatory revocation of license and permit.** (1) The
7 department shall immediately revoke the license or permit of any driver
8 or minor driver upon receiving a record showing that such driver has:

9 (b) Been convicted of driving a motor vehicle while under the
10 influence of a controlled substance, as defined in section 18-18-102 (5),
11 C.R.S.; ~~or while an habitual user of such a controlled substance;~~

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

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

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

1 reissued in less than two years.

2 **SECTION 8.** In Colorado Revised Statutes, 42-2-127, **amend** (1)
3 (a) and (6) (b); and **repeal** (5) (b) (II) as follows:

4 **42-2-127. Authority to suspend license - to deny license - type**
5 **of conviction - points.** (1) (a) Except as provided in paragraph (b) of
6 subsection (8) of this section, the department has the authority to suspend
7 the license of any driver who, in accordance with the schedule of points
8 set forth in this section, has been convicted of traffic violations resulting
9 in the accumulation of twelve points or more within any twelve
10 consecutive months or eighteen points or more within any twenty-four
11 consecutive months, or, in the case of a minor driver eighteen years of age
12 or older, who has accumulated nine points or more within any twelve
13 consecutive months, or twelve points or more within any twenty-four
14 consecutive months, or fourteen points or more for violations occurring
15 after reaching the age of eighteen years, or, in the case of a minor driver
16 under the age of eighteen years, who has accumulated more than five
17 points within any twelve consecutive months or more than six points for
18 violations occurring prior to reaching the age of eighteen years; except
19 that the accumulation of points causing the subjection to suspension of
20 the license of a chauffeur who, in the course of employment, has as a
21 principal duty the operation of a motor vehicle shall be sixteen points in
22 one year, twenty-four points in two years, or twenty-eight points in four
23 years, if all the points are accumulated while said chauffeur is in the
24 course of employment. Any provision of this section to the contrary
25 notwithstanding, the license of a chauffeur who is convicted of DUI, DUI
26 per se, DWAI, ~~habitual user~~, UDD, or leaving the scene of an accident
27 shall be suspended in the same manner as if the offense occurred outside

1 the course of employment. Whenever a minor driver under the age of
2 eighteen years receives a summons for a traffic violation, the minor's
3 parent or legal guardian or, if the minor is without parents or guardian,
4 the person who signed the minor driver's application for a license shall
5 immediately be notified by the court from which the summons was
6 issued.

7 (5) Point system schedule:

8 Type of conviction	Points
9 (b) (II) Habitual user	12

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

18 **SECTION 9.** In Colorado Revised Statutes, 42-2-132, **amend** (2)
19 (a) (III) and (2) (a) (IV) as follows:

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

1 (IV) Any person whose license or privilege to drive a motor
2 vehicle on the public highways has been revoked under section 42-2-125
3 (1) (g) (I) or (1) (i) or 42-2-203 where the revocation was due in part to
4 a DUI, DUI per se, OR DWAI ~~or habitual user~~ conviction shall be
5 required to present an affidavit stating that the person has obtained at the
6 person's own expense a signed lease agreement for the installation and
7 use of an approved ignition interlock device, as defined in section
8 42-2-132.5 (9) (a), in each motor vehicle on which the person's name
9 appears on the registration and any other vehicle that the person may
10 drive during the period of the interlock-restricted license.

11 **SECTION 10.** In Colorado Revised Statutes, 42-2-132.5, **amend**
12 (1) (a), (1) (c), and (4) (c) as follows:

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

19 (a) A person whose privilege to drive was revoked for multiple
20 convictions for any combination of a DUI, DUI per se, OR DWAI ~~or~~
21 ~~habitual user~~ pursuant to section 42-2-125 (1) (g) (I) or (1) (i);

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

25 (4) **Persons who may acquire an interlock-restricted license**
26 **prior to serving a full-term revocation.** (c) In order to be eligible for
27 early reinstatement pursuant to this subsection (4), a person who has been

1 designated an habitual offender under the provisions of section 42-2-202
2 must have at least one conviction for DUI, DUI per se, OR DWAI ~~or~~
3 ~~habitual user~~ under section 42-4-1301, and no contributing violations
4 other than violations for driving under restraint under section 42-2-138
5 or reckless driving under section 42-4-1401.

6 **SECTION 11.** In Colorado Revised Statutes, 42-2-138, **amend**
7 (1) (a) and (1) (d) as follows:

8 **42-2-138. Driving under restraint - penalty.** (1) (a) Any person
9 who drives a motor vehicle or off-highway vehicle upon any highway of
10 this state with knowledge that the person's license or privilege to drive,
11 either as a resident or a nonresident, is under restraint for any reason other
12 than conviction of DUI, DUI per se, DWAI, ~~habitual user~~, or UDD is
13 guilty of a misdemeanor. A court may sentence a person convicted of this
14 misdemeanor to imprisonment in the county jail for a period of not more
15 than six months and may impose a fine of not more than five hundred
16 dollars.

17 (d) (I) A person who drives a motor vehicle or off-highway
18 vehicle upon any highway of this state with knowledge that the person's
19 license or privilege to drive, either as a resident or nonresident, is
20 restrained under section 42-2-126 (3), is restrained solely or partially
21 because of a conviction of DUI, DUI per se, DWAI, ~~habitual user~~, or
22 UDD, or is restrained in another state solely or partially because of an
23 alcohol-related driving offense is guilty of a misdemeanor and, upon
24 conviction thereof, shall be punished by imprisonment in the county jail
25 for not less than thirty days nor more than one year and, in the discretion
26 of the court, by a fine of not less than five hundred dollars nor more than
27 one thousand dollars. Upon a second or subsequent conviction, the person

1 shall be punished by imprisonment in the county jail for not less than
2 ninety days nor more than two years and, in the discretion of the court, by
3 a fine of not less than five hundred dollars nor more than three thousand
4 dollars. The minimum county jail sentence imposed by this subparagraph
5 (I) shall be mandatory, and the court shall not grant probation or a
6 suspended sentence thereof; but, in a case where the defendant is
7 convicted although the defendant established that he or she had to drive
8 the motor vehicle in violation of this subparagraph (I) because of an
9 emergency, the mandatory jail sentence, if any, shall not apply, and, for
10 a first conviction, the court may impose a sentence of imprisonment in the
11 county jail for a period of not more than one year and, in the discretion of
12 the court, a fine of not more than one thousand dollars, and, for a second
13 or subsequent conviction, the court may impose a sentence of
14 imprisonment in the county jail for a period of not more than two years
15 and, in the discretion of the court, a fine of not more than three thousand
16 dollars.

17 (II) In any trial for a violation of subparagraph (I) of this
18 paragraph (d), a duly authenticated copy of the record of the defendant's
19 former convictions and judgments for DUI, DUI per se, DWAI, ~~habitual~~
20 ~~user~~, or UDD or an alcohol-related offense committed in another state
21 from any court of record or a certified copy of the record of any denial or
22 revocation of the defendant's driving privilege under section 42-2-126 (3)
23 from the department shall be prima facie evidence of the convictions,
24 judgments, denials, or revocations and may be used in evidence against
25 the defendant. Identification photographs and fingerprints that are part of
26 the record of the former convictions, judgments, denials, or revocations
27 and the defendant's incarceration after sentencing for any of the former

1 convictions, judgments, denials, or revocations shall be prima facie
2 evidence of the identity of the defendant and may be used in evidence
3 against the defendant.

4 **SECTION 12.** In Colorado Revised Statutes, 42-2-202, **amend**
5 (2) (a) (I) as follows:

6 **42-2-202. Habitual offenders - frequency and type of**
7 **violations.** (2) (a) An habitual offender is a person having three or more
8 convictions of any of the following separate and distinct offenses arising
9 out of separate acts committed within a period of seven years:

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

11 **SECTION 13.** In Colorado Revised Statutes, 42-2-405, **amend**
12 (3) (a) as follows:

13 **42-2-405. Driver's license disciplinary actions - grounds for**
14 **denial - suspension - revocation - disqualification.** (3) For purposes of
15 the imposition of restraints and sanctions against commercial driving
16 privileges:

17 (a) A conviction for DUI, DUI per se, OR DWAI, ~~or habitual user,~~
18 or a substantially similar law of any other state pertaining to drinking and
19 driving, or an administrative determination of a violation of section
20 42-2-126 (3) (a) or (3) (b) shall be deemed driving under the influence;
21 and

22 **SECTION 14.** In Colorado Revised Statutes, 42-4-1301.1,
23 **amend** (2) (a) (I) and (2) (b) (I) as follows:

24 **42-4-1301.1. Expressed consent for the taking of blood, breath,**
25 **urine, or saliva sample - testing.** (2) (a) (I) A person who drives a
26 motor vehicle upon the streets and highways and elsewhere throughout
27 this state shall be required to take and complete, and to cooperate in the

1 taking and completing of, any test or tests of the person's breath or blood
2 for the purpose of determining the alcoholic content of the person's blood
3 or breath when so requested and directed by a law enforcement officer
4 having probable cause to believe that the person was driving a motor
5 vehicle in violation of the prohibitions against DUI, DUI per se, DWAI,
6 ~~habitual user~~, or UDD. Except as otherwise provided in this section, if a
7 person who is twenty-one years of age or older requests that the test be a
8 blood test, then the test shall be of his or her blood; but, if the person
9 requests that a specimen of his or her blood not be drawn, then a
10 specimen of the person's breath shall be obtained and tested. A person
11 who is under twenty-one years of age shall be entitled to request a blood
12 test unless the alleged violation is UDD, in which case a specimen of the
13 person's breath shall be obtained and tested, except as provided in
14 subparagraph (II) of this paragraph (a).

15 (b) (I) Any person who drives any motor vehicle upon the streets
16 and highways and elsewhere throughout this state shall be required to
17 submit to and to complete, and to cooperate in the completing of, a test
18 or tests of such person's blood, saliva, and urine for the purpose of
19 determining the drug content within the person's system when so
20 requested and directed by a law enforcement officer having probable
21 cause to believe that the person was driving a motor vehicle in violation
22 of the prohibitions against DUI, OR DWAI or ~~habitual user~~ and when it
23 is reasonable to require such testing of blood, saliva, and urine to
24 determine whether such person was under the influence of, or impaired
25 by, one or more drugs, or one or more controlled substances, or a
26 combination of both alcohol and one or more drugs, or a combination of
27 both alcohol and one or more controlled substances.

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

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

10 (5) **Second offenses.** (a) Except as otherwise provided in
11 subsection (6) of this section, a person who is convicted of DUI, DUI per
12 se, OR DWAI ~~or habitual user~~ who, at the time of sentencing, has a prior
13 conviction of DUI, DUI per se, DWAI, ~~habitual user~~, vehicular homicide
14 pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to
15 section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked
16 license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or
17 driving while the person's driver's license was under restraint pursuant to
18 section 42-2-138 (1) (d), shall be punished by:

19 (b) If a person is convicted of DUI, DUI per se, OR DWAI ~~or~~
20 ~~habitual user~~ and the violation occurred less than five years after the date
21 of a previous violation for which the person was convicted of DUI, DUI
22 per se, DWAI, ~~habitual user~~, vehicular homicide pursuant to section
23 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205
24 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to
25 section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the
26 person's driver's license was under restraint pursuant to section 42-2-138
27 (1) (d), the court shall not have discretion to employ any sentencing

1 alternatives described in section 18-1.3-106, C.R.S., during the minimum
2 period of imprisonment described in subparagraph (I) of paragraph (a) of
3 this subsection (5); except that a court may allow the person to participate
4 in a program pursuant to section 18-1.3-106 (1) (a) (II), (1) (a) (IV), or (1)
5 (a) (V), C.R.S., only if the program is available through the county in
6 which the person is imprisoned and only for the purpose of:

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

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

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

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

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

10 (b) Persons convicted of DUI, DUI per se, AND DWAI ~~and~~
11 ~~habitual user~~ are subject to a surcharge of at least one hundred dollars but
12 no more than five hundred dollars to fund programs to reduce the number
13 of persistent drunk drivers. The surcharge shall be mandatory, and the
14 court shall not have discretion to suspend or waive the surcharge; except
15 that the court may suspend or waive the surcharge if the court determines
16 that a person is indigent. Moneys collected for the surcharge shall be
17 transmitted to the state treasurer, who shall credit the amount collected to
18 the persistent drunk driver cash fund created in section 42-3-303.

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

24 (d) (I) Persons convicted of DUI, DUI per se, AND DWAI ~~and~~
25 ~~habitual user~~ are subject to a surcharge of at least one dollar but no more
26 than ten dollars for programs to fund efforts to address alcohol and
27 substance abuse problems among persons in rural areas. The surcharge

1 shall be mandatory, and the court shall not have discretion to suspend or
2 waive the surcharge; except that the court may suspend or waive the
3 surcharge if the court determines that a person is indigent. Any moneys
4 collected for the surcharge shall be transmitted to the state treasurer, who
5 shall credit the same to the rural alcohol and substance abuse cash fund
6 created in section 27-80-117 (3), C.R.S.

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

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

17 **SECTION 16.** In Colorado Revised Statutes, 42-4-1702, **amend**
18 (1) as follows:

19 **42-4-1702. Alcohol- or drug-related traffic offenses - collateral**
20 **attack.** (1) ~~Except as otherwise provided in paragraph (b) of this~~
21 ~~subsection (1),~~ No person against whom a judgment has been entered for
22 DUI, DUI per se, DWAI, ~~habitual user~~, or UDD shall collaterally attack
23 the validity of that judgment unless such attack is commenced within six
24 months after the date of entry of the judgment.

25 **SECTION 17.** In Colorado Revised Statutes, 42-4-1705, **amend**
26 (1) (c) as follows:

27 **42-4-1705. Person arrested to be taken before the proper**

1 **court.** (1) Whenever a person is arrested for any violation of this article
2 punishable as a misdemeanor, the arrested person shall be taken without
3 unnecessary delay before a county judge who has jurisdiction of such
4 offense as provided by law, in any of the following cases:

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

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

9 **42-4-1715. Convictions, judgments, and charges recorded -**
10 **public inspection.** (1) (b) (II) Upon receiving a request for
11 expungement, the court may delay consideration of such request until
12 sufficient time has elapsed to ensure that the person is not convicted for
13 any additional offense of DUI, DUI per se, DWAI, ~~habitual user~~, or UDD
14 committed while the person was under twenty-one years of age.

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

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

21 **SECTION 19.** In Colorado Revised Statutes, 42-7-408, **amend**
22 (1) (c) (I) as follows:

23 **42-7-408. Proof of financial responsibility - methods of giving**
24 **proof - duration - exception.** (1) (c) Notwithstanding the three-year
25 requirement in paragraph (b) of this subsection (1):

26 (I) If an insured has been found guilty of DUI, DUI per se, OR
27 DWAI or ~~habitual user~~ or if the insured's license has been revoked

1 pursuant to section 42-2-126, other than a revocation under section
2 42-2-126 (3) (b) or (3) (e), only one time and no accident was involved
3 in such offense, proof of financial responsibility for the future shall be
4 required to be maintained only for as long as the insured's driving
5 privilege is ordered to be under restraint, up to a maximum of three years.
6 The time period for maintaining the future proof of liability insurance
7 shall begin at the time the driver reinstates his or her driving privilege.

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

10 **40-10.1-110. Criminal history record check.** (3) An individual
11 whose criminal history record is checked pursuant to this section is
12 disqualified and prohibited from driving motor vehicles for the motor
13 carrier described in subsection (1) of this section if the criminal history
14 record check reflects that:

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

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

23 **SECTION 21. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.