

**First Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 13-0123.01 Richard Sweetman x4333

**HOUSE BILL 13-1214**

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**HOUSE SPONSORSHIP**

**Waller,**

**SENATE SPONSORSHIP**

**(None),**

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**House Committees**

Judiciary  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING THE CLASSIFICATION OF CERTAIN DRUNK DRIVING**  
102             **OFFENSES AS FELONIES, AND, IN CONNECTION THEREWITH,**  
103             **MAKING AN APPROPRIATION.**

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**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 conviction for DUI, DUI per se, or DWAI is considered a misdemeanor offense. The bill states that such an offense is a class 5 felony if:

!       The violation occurred not more than 7 years after the first

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.*

of 2 prior convictions, upon charges separately brought and tried and arising out of separate and distinct criminal episodes, for DWAI, DUI, or DUI per se; vehicular homicide; or vehicular assault; or

- ! The violation occurred after 3 prior convictions, upon charges separately brought and tried and arising out of separate and distinct criminal episodes, for DWAI, DUI, or DUI per se; vehicular homicide; vehicular assault; or any combination thereof.

Under current law, when a person is sentenced to a period of probation as part of a second or subsequent conviction for DUI, DUI per se, or DWAI, the court:

- ! May require the person to use an approved ignition interlock device during the period of probation at the person's own expense; and
- ! May require the person to submit to continuous alcohol monitoring using such technology or devices as are available to the court for such purpose.

Under the bill, the court is required to impose these conditions on such offenders.

If a person is sentenced to a period of probation pursuant to a class 5 felony conviction of DUI, DUI per se, or DWAI, the court shall not grant early termination of probation before the person has successfully completed at least 2 years of probation.

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.

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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

1 ~~drive a motor vehicle or vehicle~~ IS GUILTY OF DRIVING UNDER THE  
2 INFLUENCE. DRIVING UNDER THE INFLUENCE IS A MISDEMEANOR, BUT IT  
3 IS A CLASS 5 FELONY IF:

4 (I) THE VIOLATION OCCURRED NOT MORE THAN SEVEN YEARS  
5 AFTER THE FIRST OF TWO PRIOR CONVICTIONS, UPON CHARGES  
6 SEPARATELY BROUGHT AND TRIED AND ARISING OUT OF SEPARATE AND  
7 DISTINCT CRIMINAL EPISODES, FOR DWAI, DUI, OR DUI PER SE;  
8 VEHICULAR HOMICIDE, AS DESCRIBED IN SECTION 18-3-106(1)(b), C.R.S.;  
9 VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205(1)(b), C.R.S.;  
10 OR ANY COMBINATION THEREOF; OR

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

17 (b) ~~It is a misdemeanor for any~~ A person who ~~is~~ DRIVES A MOTOR  
18 VEHICLE OR VEHICLE WHILE impaired by alcohol or by one or more drugs,  
19 or by a combination of alcohol and one or more drugs, ~~to drive a motor~~  
20 ~~vehicle or vehicle~~ IS GUILTY OF DRIVING WHILE ABILITY IMPAIRED.  
21 DRIVING WHILE ABILITY IMPAIRED IS A MISDEMEANOR, BUT IT IS A CLASS  
22 5 FELONY IF:

23 (I) THE VIOLATION OCCURRED NOT MORE THAN SEVEN YEARS  
24 AFTER THE FIRST OF TWO PRIOR CONVICTIONS, UPON CHARGES  
25 SEPARATELY BROUGHT AND TRIED AND ARISING OUT OF SEPARATE AND  
26 DISTINCT CRIMINAL EPISODES, FOR DWAI, DUI, OR DUI PER SE;  
27 VEHICULAR HOMICIDE, AS DESCRIBED IN SECTION 18-3-106(1)(b), C.R.S.;

1 VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205 (1) (b), C.R.S.;  
2 OR ANY COMBINATION THEREOF; OR

3 (II) THE VIOLATION OCCURRED AFTER THREE PRIOR CONVICTIONS,  
4 UPON CHARGES SEPARATELY BROUGHT AND TRIED AND ARISING OUT OF  
5 SEPARATE AND DISTINCT CRIMINAL EPISODES, FOR DWAI, DUI, OR DUI  
6 PER SE; VEHICULAR HOMICIDE, AS DESCRIBED IN SECTION 18-3-106 (1) (b),  
7 C.R.S.; VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205 (1) (b),  
8 C.R.S.; OR ANY COMBINATION THEREOF.

9 (j) FOR THE PURPOSES OF THIS SECTION, A PERSON SHALL BE  
10 DEEMED TO HAVE A PRIOR CONVICTION FOR DUI, DUI PER SE, OR DWAI;  
11 VEHICULAR HOMICIDE, AS DESCRIBED IN SECTION 18-3-106 (1) (b), C.R.S.;  
12 OR VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205 (1) (b),  
13 C.R.S.; IF THE PERSON HAS BEEN CONVICTED UNDER THE LAWS OF THIS  
14 STATE OR UNDER THE LAWS OF ANY OTHER STATE, THE UNITED STATES,  
15 OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES,  
16 OF AN ACT THAT, IF COMMITTED WITHIN THIS STATE, WOULD CONSTITUTE  
17 ANY OF THESE OFFENSES. SUCH PRIOR CONVICTIONS SHALL BE SET FORTH  
18 IN APT WORDS IN THE INDICTMENT OR INFORMATION.

19 (k) IF A DEFENDANT IS CONVICTED OF A CLASS 5 FELONY  
20 PURSUANT TO THIS SECTION, THE COURT SHALL SENTENCE THE PERSON IN  
21 ACCORDANCE WITH THE PROVISIONS OF SECTIONS 18-1.3-401, C.R.S., AND  
22 42-4-1307.

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

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

8 (I) THE VIOLATION OCCURRED NOT MORE THAN SEVEN YEARS  
9 AFTER THE FIRST OF TWO PRIOR CONVICTIONS, UPON CHARGES  
10 SEPARATELY BROUGHT AND TRIED AND ARISING OUT OF SEPARATE AND  
11 DISTINCT CRIMINAL EPISODES, FOR DWAI, DUI, OR DUI PER SE;  
12 VEHICULAR HOMICIDE, AS DESCRIBED IN SECTION 18-3-106(1)(b), C.R.S.;  
13 VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205(1)(b), C.R.S.;  
14 OR ANY COMBINATION THEREOF; OR

15 (II) THE VIOLATION OCCURRED AFTER THREE PRIOR CONVICTIONS,  
16 UPON CHARGES SEPARATELY BROUGHT AND TRIED AND ARISING OUT OF  
17 SEPARATE AND DISTINCT CRIMINAL EPISODES, FOR DWAI, DUI, OR DUI  
18 PER SE; VEHICULAR HOMICIDE, AS DESCRIBED IN SECTION 18-3-106(1)(b),  
19 C.R.S.; VEHICULAR ASSAULT, AS DESCRIBED IN SECTION 18-3-205(1)(b),  
20 C.R.S.; OR ANY COMBINATION THEREOF.

21 ~~(a.5) (f) It is a class A traffic infraction for any person under~~  
22 ~~twenty-one years of age to drive a motor vehicle or vehicle when the~~  
23 ~~person's BAC, as shown by analysis of the person's breath, is at least 0.02~~  
24 ~~but not more than 0.05 at the time of driving or within two hours after~~  
25 ~~driving. The court, upon sentencing a defendant pursuant to this~~  
26 ~~subparagraph (f), may, in addition to any penalty imposed under a class~~  
27 ~~A traffic infraction, order that the defendant perform up to twenty-four~~

1 ~~hours of useful public service, subject to the conditions and restrictions~~  
2 ~~of section 18-1.3-507, C.R.S., and may further order that the defendant~~  
3 ~~submit to and complete an alcohol evaluation or assessment, an alcohol~~  
4 ~~education program, or an alcohol treatment program at such defendant's~~  
5 ~~own expense.~~

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

8 (d) (I) IT IS A CLASS A TRAFFIC INFRACTION FOR ANY PERSON  
9 UNDER TWENTY-ONE YEARS OF AGE TO DRIVE A MOTOR VEHICLE OR  
10 VEHICLE WHEN THE PERSON'S BAC, AS SHOWN BY ANALYSIS OF THE  
11 PERSON'S BREATH, IS AT LEAST 0.02 BUT NOT MORE THAN 0.05 AT THE  
12 TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING. THE COURT,  
13 UPON SENTENCING A DEFENDANT PURSUANT TO THIS SUBPARAGRAPH (I),  
14 MAY, IN ADDITION TO ANY PENALTY IMPOSED UNDER A CLASS A TRAFFIC  
15 INFRACTION, ORDER THAT THE DEFENDANT PERFORM UP TO TWENTY-FOUR  
16 HOURS OF USEFUL PUBLIC SERVICE, SUBJECT TO THE CONDITIONS AND  
17 RESTRICTIONS OF SECTION 18-1.3-507, C.R.S., AND MAY FURTHER ORDER  
18 THAT THE DEFENDANT SUBMIT TO AND COMPLETE AN ALCOHOL  
19 EVALUATION OR ASSESSMENT, AN ALCOHOL EDUCATION PROGRAM, OR AN  
20 ALCOHOL TREATMENT PROGRAM AT SUCH DEFENDANT'S OWN EXPENSE.

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

23 **SECTION 2.** In Colorado Revised Statutes, 42-4-1307, **amend**  
24 (1) (b), (2), (5) (a) introductory portion, (5) (b) introductory portion, (6)  
25 (a) introductory portion, (7), (8), and (9) (a); **repeal** (15); and **add** (6.5)  
26 as follows:

27 **42-4-1307. Penalties for traffic offenses involving alcohol and**

1 **drugs - repeal.** (1) **Legislative declaration.** The general assembly  
2 hereby finds and declares that, for the purposes of sentencing as described  
3 in section 18-1-102.5, C.R.S., each sentence for a conviction of a  
4 violation of section 42-4-1301 shall include:

5 (b) For a second or subsequent offender, a period of probation,  
6 UNLESS THE COURT SENTENCES THE DEFENDANT TO THE DEPARTMENT OF  
7 CORRECTIONS PURSUANT TO SUBSECTION (6) OF THIS SECTION. The  
8 imposition of a period of probation upon the conviction of a first-time  
9 offender ~~shall be~~ IS subject to the court's discretion as described in  
10 paragraph (c) of subsection (3) and paragraph (c) of subsection (4) of this  
11 section. The purpose of probation is to help the offender change his or her  
12 behavior to reduce the risk of future violations of section 42-4-1301. If  
13 a court imposes imprisonment as a penalty for a violation of a condition  
14 of his or her probation, the penalty ~~shall~~ WILL constitute a separate period  
15 of imprisonment that the offender shall serve in addition to the  
16 imprisonment component of his or her original sentence.

17 (2) **Definitions.** As used in this section, unless the context  
18 otherwise requires:

19 (a) "APPROVED IGNITION INTERLOCK DEVICE" MEANS A DEVICE  
20 APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
21 THAT IS INSTALLED IN A MOTOR VEHICLE AND THAT MEASURES THE  
22 BREATH ALCOHOL CONTENT OF THE DRIVER BEFORE A VEHICLE IS STARTED  
23 AND THAT PERIODICALLY REQUIRES ADDITIONAL BREATH SAMPLES DURING  
24 VEHICLE OPERATION. THE DEVICE MAY NOT ALLOW A MOTOR VEHICLE TO  
25 BE STARTED OR TO CONTINUE NORMAL OPERATION IF THE DEVICE  
26 MEASURES AN ALCOHOL LEVEL ABOVE THE LEVEL ESTABLISHED BY THE  
27 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

1           ~~(a)~~ (b) "Conviction" means a verdict of guilty by a judge or jury  
2 or a plea of guilty or nolo contendere that is accepted by the court for an  
3 offense or adjudication for an offense that would constitute a criminal  
4 offense if committed by an adult. "Conviction" also includes having  
5 received a deferred judgment and sentence or deferred adjudication;  
6 except that a person shall not be deemed to have been convicted if the  
7 person has successfully completed a deferred sentence or deferred  
8 adjudication.

9           ~~(b)~~ (c) "Driving under the influence" or "DUI" means driving a  
10 motor vehicle or vehicle when a person has consumed alcohol or one or  
11 more drugs, or a combination of alcohol and one or more drugs, that  
12 affects the person to a degree that the person is substantially incapable,  
13 either mentally or physically, or both mentally and physically, of  
14 exercising clear judgment, sufficient physical control, or due care in the  
15 safe operation of a vehicle.

16           ~~(c)~~ (d) "Driving while ability impaired" or "DWAI" means driving  
17 a motor vehicle or vehicle when a person has consumed alcohol or one or  
18 more drugs, or a combination of both alcohol and one or more drugs, that  
19 affects the person to the slightest degree so that the person is less able  
20 than the person ordinarily would have been, either mentally or physically,  
21 or both mentally and physically, to exercise clear judgment, sufficient  
22 physical control, or due care in the safe operation of a vehicle.

23           ~~(d)~~ (e) "UDD" shall have the same meaning as provided in section  
24 42-1-102 (109.7).

25           (5) **Second offenses.** (a) Except as otherwise provided in  
26 subsection (6) OR (6.5) of this section, a person who is convicted of DUI,  
27 DUI per se, DWAI, or habitual user who, at the time of sentencing, has



1 a prior conviction of DUI, DUI per se, DWAI, habitual user, vehicular  
2 homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault  
3 pursuant to section 18-3-205 (1) (b), C.R.S., ~~aggravated driving with a~~  
4 ~~revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I)~~  
5 ~~(B)~~; or driving while the person's driver's license was under restraint  
6 pursuant to section 42-2-138 (1) (d), ~~shall~~ WILL be punished by:

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

22 (6) **Third and subsequent offenses - misdemeanors.** (a) EXCEPT  
23 AS PROVIDED IN SUBSECTION (6.5) OF THIS SECTION, a person who is  
24 convicted of DUI, DUI per se, DWAI, or habitual user who, at the time  
25 of sentencing, has two or more prior convictions of DUI, DUI per se,  
26 DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1)  
27 (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S.,

1 ~~aggravated driving with a revoked license pursuant to section 42-2-206~~  
2 ~~(1) (b) (I) (A) or (1) (b) (I) (B)~~, or driving while the person's driver's  
3 license was under restraint pursuant to section 42-2-138 (1) (d) ~~shall~~ WILL  
4 be punished by:

5 (6.5) **Third and subsequent offenses - felonies.** (a) A PERSON  
6 WHO IS CONVICTED OF DUI, DUI PER SE, OR DWAI AS DESCRIBED IN  
7 SECTION 42-4-1301 (1) (a) (I), (1) (a) (II), (1) (b) (I), (1) (b) (II), (2) (a)  
8 (I), OR (2) (a) (II) WILL BE PUNISHED BY:

9 (I) A TERM OF INCARCERATION IN THE DEPARTMENT OF  
10 CORRECTIONS OF AT LEAST THE MINIMUM IN THE PRESUMPTIVE RANGE  
11 PROVIDED FOR SUCH AN OFFENSE IN SECTION 18-1.3-401 (1) (a), C.R.S.  
12 THE COURT MAY NOT SENTENCE THE DEFENDANT TO PROBATION IF THE  
13 DEFENDANT IS SENTENCED TO THE DEPARTMENT OF CORRECTIONS BUT  
14 MAY STILL SENTENCE THE DEFENDANT PURSUANT TO THE PROVISIONS OF  
15 SUBPARAGRAPH (III) OF THIS PARAGRAPH (a) AND PARAGRAPH (b) OF  
16 SUBSECTION (7) OF THIS SECTION. THE COURT SHALL ORDER THE  
17 CONDITIONS DESCRIBED IN SUBPARAGRAPHS (II) AND (VII) OF PARAGRAPH  
18 (b) OF SUBSECTION (7) OF THIS SECTION AND SHALL ORDER THE  
19 DEFENDANT TO USE AN APPROVED INTERLOCK DEVICE DURING THE PAROLE  
20 PERIOD. THE DEFENDANT SHALL COMPLETE ALL COURT-ORDERED  
21 PROGRAMS PURSUANT TO PARAGRAPH (b) OF SUBSECTION (7) OF THIS  
22 SECTION BEFORE THE COMPLETION OF HIS OR HER PERIOD OF PAROLE.

23 (II) A PERIOD OF PROBATION OF AT LEAST TWO YEARS, WHICH  
24 PERIOD SHALL BEGIN IMMEDIATELY UPON THE COMMENCEMENT OF ANY  
25 PART OF THE SENTENCE THAT IS IMPOSED UPON THE PERSON PURSUANT TO  
26 THIS SECTION, AND A SUSPENDED SENTENCE OF INCARCERATION IN THE  
27 DEPARTMENT OF CORRECTIONS FOR AT LEAST ONE YEAR, AS DESCRIBED IN

1 PARAGRAPH (b) OF SUBSECTION (7) OF THIS SECTION. AS A CONDITION OF  
2 PROBATION, THE COURT SHALL ORDER IMPRISONMENT IN THE COUNTY JAIL  
3 FOR AT LEAST NINETY CONSECUTIVE DAYS BUT NO MORE THAN ONE YEAR.  
4 DURING THE MANDATORY NINETY-DAY PERIOD OF IMPRISONMENT, THE  
5 PERSON IS NOT BE ELIGIBLE FOR EARNED TIME OR GOOD TIME PURSUANT  
6 TO SECTION 17-26-109, C.R.S., OR FOR TRUSTY PRISONER STATUS  
7 PURSUANT TO SECTION 17-26-115, C.R.S.; EXCEPT THAT A PERSON MUST  
8 RECEIVE CREDIT FOR ANY TIME THAT HE OR SHE SERVED IN CUSTODY FOR  
9 THE VIOLATION PRIOR TO HIS OR HER CONVICTION. DURING THE  
10 MANDATORY PERIOD OF IMPRISONMENT, THE COURT DOES NOT HAVE ANY  
11 DISCRETION TO EMPLOY ANY SENTENCING ALTERNATIVES DESCRIBED IN  
12 SECTION 18-1.3-106, C.R.S.; EXCEPT THAT THE PERSON MAY PARTICIPATE  
13 IN A PROGRAM PURSUANT TO SECTION 18-1.3-106 (1) (a) (II), (1) (a) (IV),  
14 OR (1) (a) (V), C.R.S., ONLY IF THE PROGRAM IS AVAILABLE THROUGH THE  
15 COUNTY IN WHICH THE PERSON IS IMPRISONED AND ONLY FOR THE  
16 PURPOSE OF:

17 (A) CONTINUING A POSITION OF EMPLOYMENT THAT THE PERSON  
18 HELD AT THE TIME OF SENTENCING FOR SAID VIOLATION;

19 (B) CONTINUING ATTENDANCE AT AN EDUCATIONAL INSTITUTION  
20 AT WHICH THE PERSON WAS ENROLLED AT THE TIME OF SENTENCING FOR  
21 SAID VIOLATION; OR

22 (C) PARTICIPATING IN A COURT-ORDERED LEVEL II ALCOHOL AND  
23 DRUG DRIVING SAFETY EDUCATION OR TREATMENT PROGRAM, AS  
24 DESCRIBED IN SECTION 42-4-1301.3 (3) (c) (IV);

25 (III) AT LEAST FORTY-EIGHT HOURS BUT NO MORE THAN ONE  
26 HUNDRED TWENTY HOURS OF USEFUL PUBLIC SERVICE, AND THE COURT  
27 DOES NOT HAVE DISCRETION TO SUSPEND THE MANDATORY MINIMUM

1 PERIOD OF PERFORMANCE OF THE SERVICE.

2 (7) **Probation-related penalties.** (a) When a person is sentenced  
3 to a period of probation pursuant to subparagraph (IV) of paragraph (a)  
4 of subsection (5) of this section or subparagraph (IV) of paragraph (a) of  
5 subsection (6) of this section, THE COURT:

6 (a) (I) ~~The court~~ Shall impose ~~in addition to any other condition~~  
7 ~~of probation,~~ a sentence to one year of imprisonment in the county jail,  
8 which sentence ~~shall~~ WILL be suspended, and against which sentence the  
9 person shall not receive credit for any period of imprisonment to which  
10 he or she is sentenced pursuant to subparagraph (I) of paragraph (a) of  
11 subsection (5) of this section or subparagraph (I) of paragraph (a) of  
12 subsection (6) of this section;

13 (b) ~~The court:~~

14 (H) (II) Shall include, as a condition of the person's probation, a  
15 requirement that the person complete a level II alcohol and drug driving  
16 safety education or treatment program, as described in section  
17 42-4-1301.3 (3) (c) (IV), at the person's own expense;

18 (H) (III) May impose an additional period of probation for the  
19 purpose of monitoring the person or ensuring that the person continues to  
20 receive court-ordered alcohol or substance abuse treatment, which  
21 additional period shall not exceed two years;

22 (H) (IV) May require that the person commence the alcohol and  
23 drug driving safety education or treatment program described in  
24 ~~subparagraph (I)~~ SUBPARAGRAPH (II) of this ~~paragraph (b)~~ PARAGRAPH (a)  
25 during any period of imprisonment to which the person is sentenced;

26 (H) (V) May require the person to appear before the court at any  
27 time during the person's period of probation;

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

4           ~~(VI)~~ (VII) May require the person to submit to continuous alcohol  
5 monitoring using such technology or devices as are available to the court  
6 for such purpose; and

7           ~~(VII)~~ (VIII) May impose such additional conditions of probation  
8 as may be permitted by law.

9           (b) WHEN A PERSON IS SENTENCED TO A PERIOD OF PROBATION  
10 PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (6.5)  
11 OF THIS SECTION, THE COURT:

12           (I) SHALL IMPOSE A SENTENCE OF AT LEAST ONE YEAR OF  
13 INCARCERATION IN THE DEPARTMENT OF CORRECTIONS, WHICH SENTENCE  
14 SHALL BE SUSPENDED, AND AGAINST WHICH SENTENCE THE PERSON WILL  
15 NOT RECEIVE CREDIT FOR ANY PERIOD OF IMPRISONMENT TO WHICH HE OR  
16 SHE IS SENTENCED PURSUANT TO THIS SUBPARAGRAPH (I). THE COURT  
17 MAY IMPOSE THE SUSPENDED SENTENCE AT ANY TIME DURING THE PERIOD  
18 OF PROBATION IF THE PERSON VIOLATES A CONDITION OF HIS OR HER  
19 PROBATION. THE COURT SHALL CONSIDER THE FACTORS IN SUBPARAGRAPH  
20 (I) OF PARAGRAPH (c) OF THIS SUBSECTION (7) BEFORE IMPOSING THE  
21 SUSPENDED SENTENCE.

22           (II) SHALL INCLUDE, AS A CONDITION OF THE PERSON'S PROBATION,  
23 A REQUIREMENT THAT THE PERSON COMPLETE A LEVEL II ALCOHOL AND  
24 DRUG DRIVING SAFETY EDUCATION OR TREATMENT PROGRAM, AS  
25 DESCRIBED IN SECTION 42-4-1301.3 (3) (c) (IV), AT THE PERSON'S OWN  
26 EXPENSE;

27           (III) MAY IMPOSE AN ADDITIONAL PERIOD OF PROBATION FOR THE

1 PURPOSE OF MONITORING THE PERSON OR ENSURING THAT THE PERSON  
2 CONTINUES TO RECEIVE COURT-ORDERED ALCOHOL OR SUBSTANCE ABUSE  
3 TREATMENT;

4 (IV) MAY REQUIRE THAT THE PERSON COMMENCE THE ALCOHOL  
5 AND DRUG DRIVING SAFETY EDUCATION OR TREATMENT PROGRAM  
6 DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (b) DURING ANY  
7 PERIOD OF IMPRISONMENT TO WHICH THE PERSON IS SENTENCED;

8 (V) MAY REQUIRE THE PERSON TO APPEAR BEFORE THE COURT AT  
9 ANY TIME DURING THE PERSON'S PERIOD OF PROBATION;

10 (VI) SHALL REQUIRE THE PERSON TO USE AN APPROVED IGNITION  
11 INTERLOCK DEVICE FOR A MINIMUM OF TWO YEARS DURING THE PERIOD OF  
12 PROBATION AT THE PERSON'S OWN EXPENSE;

13 (VII) SHALL REQUIRE THE PERSON TO SUBMIT TO CONTINUOUS  
14 ALCOHOL MONITORING USING SUCH TECHNOLOGY OR DEVICES AS ARE  
15 AVAILABLE TO THE COURT FOR SUCH PURPOSE; AND

16 (VIII) MAY IMPOSE SUCH ADDITIONAL CONDITIONS OF PROBATION  
17 AS MAY BE PERMITTED BY LAW.

18 ~~(c) (I) The court may impose all or part of the suspended sentence~~  
19 ~~described in subparagraph (IV) of paragraph (a) of subsection (5) of this~~  
20 ~~section or subparagraph (IV) of paragraph (a) of subsection (6) of this~~  
21 ~~section at any time during the period of probation if the person violates~~  
22 ~~a condition of his or her probation. During the period of imprisonment,~~  
23 ~~the person shall continue serving the probation sentence with no reduction~~  
24 ~~in time for the sentence to probation. A cumulative period of~~  
25 ~~imprisonment imposed pursuant to this paragraph (c) shall not exceed one~~  
26 ~~year.~~ IN IMPOSING A SENTENCE OF IMPRISONMENT PURSUANT TO  
27 SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (7) OR

1 PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS SUBSECTION  
2 (7), THE COURT SHALL CONSIDER THE NATURE OF THE VIOLATION, THE  
3 REPORT OR TESTIMONY OF THE PROBATION DEPARTMENT, THE IMPACT ON  
4 PUBLIC SAFETY, THE PROGRESS OF THE PERSON IN ANY COURT-ORDERED  
5 ALCOHOL AND DRUG DRIVING SAFETY EDUCATION OR TREATMENT  
6 PROGRAM, AND ANY OTHER INFORMATION THAT MAY ASSIST THE COURT  
7 IN PROMOTING THE PERSON'S COMPLIANCE WITH THE CONDITIONS OF HIS  
8 OR HER PROBATION.

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

20 (d) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
21 PARAGRAPH (d), the prosecution, the person, the person's counsel, or the  
22 person's probation officer may petition the court at any time for an early  
23 termination of the period of probation, which the court may grant upon a  
24 finding of the court that:

25 (†) (A) The person has successfully completed a level II alcohol  
26 and drug driving safety education or treatment program pursuant to  
27 ~~subparagraph (I) of paragraph (b) SUBPARAGRAPH (II) OF PARAGRAPH (a)~~

1 of this subsection (7);

2 ~~(H)~~ (B) The person has otherwise complied with the terms and  
3 conditions of his or her probation; and

4 ~~(H)~~ (C) Early termination of the period of probation will not  
5 endanger public safety.

6 (II) IF THE PERSON WAS SENTENCED TO A PERIOD OF PROBATION  
7 PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (6.5)  
8 OF THIS SECTION, THE COURT SHALL NOT GRANT EARLY TERMINATION OF  
9 PROBATION BEFORE THE PERSON'S SUCCESSFUL COMPLETION OF AT LEAST  
10 TWO YEARS OF PROBATION.

11 (8) **Ignition interlock devices.** EXCEPT AS REQUIRED BY  
12 SUBPARAGRAPH (I) OF PARAGRAPH (a) OF SUBSECTION (6.5) OF THIS  
13 SECTION AND BY SUBPARAGRAPH (VI) OF PARAGRAPH (b) OF SUBSECTION  
14 (7) OF THIS SECTION, in sentencing a person pursuant to this section,  
15 courts are encouraged to require the person to use an approved ignition  
16 interlock device ~~as defined in section 42-2-132.5 (9) (a)~~, as a condition  
17 of bond, probation, and participation in programs pursuant to section  
18 18-1.3-106, C.R.S.

19 (9) **Previous convictions.** (a) For the purposes of subsections (5),  
20 ~~and~~ (6), AND (6.5) of this section, a person ~~shall be~~ IS deemed to have a  
21 previous conviction for DUI, DUI per se, DWAI, habitual user, vehicular  
22 homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault  
23 pursuant to section 18-3-205 (1) (b), C.R.S., ~~aggravated driving with a~~  
24 ~~revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I)~~  
25 ~~(B)~~, or driving while the person's driver's license was under restraint  
26 pursuant to section 42-2-138 (1) (d), if the person has been convicted  
27 under the laws of this state or under the laws of any other state, the United



1 States, or any territory subject to the jurisdiction of the United States, of  
2 an act that, if committed within this state, would constitute the offense of  
3 DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to  
4 section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section  
5 18-3-205 (1) (b), C.R.S., ~~aggravated driving with a revoked license~~  
6 ~~pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B)~~, or driving  
7 while the person's driver's license was under restraint pursuant to section  
8 42-2-138 (1) (d).

9 (15) ~~If a defendant is convicted of aggravated driving with a~~  
10 ~~revoked license based upon the commission of DUI, DUI per se, or~~  
11 ~~DWAI pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B):~~

12 (a) ~~The court shall convict and sentence the offender for each~~  
13 ~~offense separately;~~

14 (b) ~~The court shall impose all of the penalties for the~~  
15 ~~alcohol-related driving offense, as such penalties are described in this~~  
16 ~~section;~~

17 (c) ~~The provisions of section 18-1-408, C.R.S., shall not apply to~~  
18 ~~the sentences imposed for either conviction;~~

19 (d) ~~Any probation imposed for a conviction under section~~  
20 ~~42-2-206 may run concurrently with any probation required by this~~  
21 ~~section; and~~

22 (e) ~~The department shall reflect both convictions on the~~  
23 ~~defendant's driving record.~~

24 **SECTION 3.** In Colorado Revised Statutes, 42-2-206, **repeal** (1)  
25 (b) (I) (A) and (1) (b) (I) (B) as follows:

26 **42-2-206. Driving after revocation prohibited.** (1) (b) (I) A  
27 person commits the crime of aggravated driving with a revoked license

1 if he or she is found to be an habitual offender and thereafter operates a  
2 motor vehicle in this state while the revocation of the department  
3 prohibiting such operation is in effect and, as a part of the same criminal  
4 episode, also commits any of the following offenses:

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

6 (B) ~~DWAI~~;

7 **SECTION 4.** In Colorado Revised Statutes, 42-1-102, **amend**  
8 (109.7) as follows:

9 **42-1-102. Definitions.** As used in articles 1 to 4 of this title,  
10 unless the context otherwise requires:

11 (109.7) "UDD" means underage drinking and driving, and use of  
12 the term shall incorporate by reference the offense described in ~~section~~  
13 ~~42-4-1301 (2) (a.5)~~ SECTION 42-4-1301 (2) (d).

14 **SECTION 5.** In Colorado Revised Statutes, 42-2-125, **amend**  
15 (2.5) introductory portion as follows:

16 **42-2-125. Mandatory revocation of license and permit.**  
17 (2.5) The period of revocation under paragraph (g.5) of subsection (1) of  
18 this section for a person who is less than twenty-one years of age at the  
19 time of the offense and who is convicted of driving with an alcohol  
20 content of at least 0.02 but not more than 0.05 under ~~section 42-4-1301~~  
21 ~~(2) (a.5)~~ SECTION 42-4-1301 (2) (d) is as follows:

22 **SECTION 6.** In Colorado Revised Statutes, 42-4-1701, **amend**  
23 (4) (a) (I) introductory portion, (4) (a) (I) (N), and (4) (f) (I) as follows:

24 **42-4-1701. Traffic offenses and infractions classified -**  
25 **penalties - penalty and surcharge schedule - repeal.** (4) (a) (I) Except  
26 as provided in paragraph (c) of subsection (5) of this section, every  
27 person who is convicted of, who admits liability for, or against whom a

1 judgment is entered for a violation of any provision of this title to which  
 2 paragraph (a) or (b) of subsection (5) of this section apply ~~shall~~ MUST be  
 3 fined or penalized, and have a surcharge levied thereon pursuant to  
 4 sections 24-4.1-119 (1) (f) and 24-4.2-104 (1) (b) (I), C.R.S., in  
 5 accordance with the penalty and surcharge schedule set forth in  
 6 sub-subparagraphs (A) to (P) of this subparagraph (I); or, if no penalty or  
 7 surcharge is specified in the schedule, the penalty for class A and class B  
 8 traffic infractions ~~shall~~ MUST be fifteen dollars, and the surcharge shall be  
 9 four dollars. These penalties and surcharges ~~shall~~ MUST apply whether the  
 10 defendant acknowledges the defendant's guilt or liability in accordance  
 11 with the procedure set forth by paragraph (a) of subsection (5) of this  
 12 section or is found guilty by a court of competent jurisdiction or has  
 13 judgment entered against the defendant by a county court magistrate.  
 14 Penalties and surcharges for violating specific sections ~~shall be~~ ARE as  
 15 follows:

16 (N) **Other offenses:**

|    |   |           |          |
|----|---|-----------|----------|
| 17 | <del>42-4-1301 (2)(a.5)</del> 42-4-1301 (2) (d) | \$ 100.00 | \$ 16.00 |
| 18 | 42-4-1305                                       | 50.00     | 16.00    |
| 19 | 42-4-1402                                       | 150.00    | 16.00    |
| 20 | 42-4-1403                                       | 30.00     | 6.00     |
| 21 | 42-4-1404                                       | 15.00     | 6.00     |
| 22 | 42-4-1406                                       | 35.00     | 10.00    |
| 23 | 42-4-1407 (3)(a)                                | 35.00     | 10.00    |
| 24 | 42-4-1407 (3)(b)                                | 100.00    | 30.00    |
| 25 | 42-4-1407 (3)(c)                                | 500.00    | 200.00   |
| 26 | 42-4-314  | 35.00     | 10.00    |
| 27 | 42-4-1408                                       | 15.00     | 6.00     |

|   |                  |          |          |
|---|------------------|----------|----------|
| 1 | 42-4-1414 (2)(a) | 500.00   | 156.00   |
| 2 | 42-4-1414 (2)(b) | 1,000.00 | 312.00   |
| 3 | 42-4-1414 (2)(c) | 5,000.00 | 1,560.00 |
| 4 | 42-4-1416 (3)    | 75.00    | 4.00     |
| 5 | 42-20-109 (2)    | 250.00   | 66.00    |

6 (f) (I) In addition to the surcharge specified in sub-subparagraph  
7 (N) of subparagraph (I) of paragraph (a) of this subsection (4), an  
8 additional surcharge of five dollars ~~shall~~ MUST be assessed for a violation  
9 of ~~section 42-4-1301 (2) (a.5)~~ SECTION 42-4-1301 (2) (d). Moneys  
10 collected pursuant to this paragraph (f) ~~shall~~ MUST be transmitted to the  
11 state treasurer who shall deposit such moneys in the rural alcohol and  
12 substance abuse cash fund created in section 27-80-117 (3), C.R.S.,  
13 within fourteen days after the end of each quarter, to be used for the  
14 purposes set forth in section 27-80-117, C.R.S.

15 **SECTION 7. Potential appropriation.** Pursuant to section  
16 2-2-703, Colorado Revised Statutes, any bill that results in a net increase  
17 in periods of imprisonment in the state correctional facilities must include  
18 an appropriation of moneys that is sufficient to cover any increased  
19 capital construction and operational costs for the first five fiscal years in  
20 which there is a fiscal impact. Because this act may increase periods of  
21 imprisonment, this act may require a five-year appropriation.

22 **SECTION 8. Act subject to petition - effective date.** This act  
23 takes effect at 12:01 a.m. on the day following the expiration of the  
24 ninety-day period after final adjournment of the general assembly (August  
25 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a  
26 referendum petition is filed pursuant to section 1 (3) of article V of the  
27 state constitution against this act or an item, section, or part of this act

1     within such period, then the act, item, section, or part will not take effect  
2     unless approved by the people at the general election to be held in  
3     November 2014 and, in such case, will take effect on the date of the  
4     official declaration of the vote thereon by the governor.