

First Extraordinary Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

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

LLS NO. 12B-2008.01 Richard Sweetman x4333

HOUSE BILL 12S-1005

HOUSE SPONSORSHIP

Waller and Fields,

SENATE SPONSORSHIP

King S.,

House Committees

State, Veterans, & Military Affairs
Appropriations

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

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

The existing definition of "DUI per se" is expanded to include driving when the driver's blood contains 5 nanograms or more of delta 9-tetrahydrocannabinol per milliliter in whole blood.

Under current law, in any prosecution for vehicular homicide or

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.

HOUSE
Amended 3rd Reading
May 15, 2012

HOUSE
Amended 2nd Reading
May 14, 2012

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 statutory instances of the term "habitual user".

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

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

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

6 (27.5) "DUI per se" means:

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

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

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

18 **42-4-1301. Driving under the influence - driving while**
19 **impaired - driving with excessive alcoholic content - definitions -**
20 **penalties.** (1) (c) ~~It is a misdemeanor for any person who is an habitual~~

1 ~~user of any controlled substance defined in section 12-22-303 (7), C.R.S.,~~
2 ~~to drive a motor vehicle, vehicle, or low-power scooter in this state.~~

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

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

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

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

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

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

18 (6)(e) **Involuntary blood test - admissibility.** Evidence acquired
19 through an involuntary blood test pursuant to section 42-4-1301.1 (3)
20 shall be admissible in any prosecution for DUI, DUI per se, DWAI,
21 ~~habitual user~~, or UDD, and in any prosecution for criminally negligent
22 homicide pursuant to section 18-3-105, C.R.S., vehicular homicide
23 pursuant to section 18-3-106 (1) (b), C.R.S., assault in the third degree
24 pursuant to section 18-3-204, C.R.S., or vehicular assault pursuant to
25 section 18-3-205 (1) (b), C.R.S.

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

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

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

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

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

20 **18-3-205. Vehicular assault.** (1) (b) (II) For the purposes of this
21 subsection (1), "one or more drugs" ~~shall mean all substances defined as~~
22 ~~a~~ MEANS ANY drug, AS DEFINED in section 12-22-303 (13), C.R.S., ~~and all~~
23 ~~controlled substances defined in section 12-22-303 (7), C.R.S.~~ ANY
24 CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 18-18-102 (5), and
25 ~~glue-sniffing, aerosol inhalation, or the inhalation of any INHALED GLUE,~~
26 AEROSOL, OR other toxic vapor or vapors, as defined in section 18-18-412.

27 (2) In any prosecution for a violation of subsection (1) of this

1 section, the amount of alcohol in the defendant's blood or breath at the
2 time of the commission of the alleged offense, or within a reasonable time
3 thereafter, as shown by analysis of the defendant's blood or breath, ~~shall~~
4 ~~give~~ GIVES rise to the following presumptions:

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

10 **SECTION 5.** In Colorado Revised Statutes, 40-10.1-110, **amend**
11 (3) (c) (I) as follows:

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

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

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

25 **SECTION 6.** In Colorado Revised Statutes, **repeal** 42-1-102
26 (41.7).

27 **SECTION 7.** In Colorado Revised Statutes, 42-2-121, **amend** (2)

1 (b) and (5) (a) (III) as follows:

2 **42-2-121. Records to be kept by department - admission of**

3 **records in court.** (2) (b) The department shall also keep a separate file
4 of all abstracts of court records of dismissals of DUI, DUI per se, DWAI,
5 ~~habitual user~~, and UDD charges and all abstracts of records in cases
6 where the original charges were for DUI, DUI per se, DWAI, ~~habitual~~
7 ~~user~~, and UDD and the convictions were for nonalcohol- or
8 nondrug-related traffic offenses. This file shall be made available only to
9 criminal justice agencies, as defined in section 24-72-302 (3), C.R.S.

10 (5) (a) Upon application by a person, the department shall
11 expunge all records concerning a conviction of a person for UDD with a
12 BAC of at least 0.02 but not more than 0.05 and any records concerning
13 an administrative determination resulting in a revocation under section
14 42-2-126 (3) (b) or (3) (e) if:

15 (III) The person has not been convicted for any other DUI, DUI
16 per se, DWAI, ~~habitual user~~, or UDD offense that was committed while
17 such person was under twenty-one years of age and is not subject to any
18 other administrative determination resulting in a revocation under section
19 42-2-126 for any other occurrence while such person was under
20 twenty-one years of age;

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

23 **42-2-125. Mandatory revocation of license and permit.** (1) The
24 department shall immediately revoke the license or permit of any driver
25 or minor driver upon receiving a record showing that such driver has:

26 (b) Been convicted of driving a motor vehicle while under the
27 influence of a controlled substance, as defined in section 12-22-303 (7),

1 C.R.S.; ~~or while an habitual user of such a controlled substance;~~
2 (g) (I) Been twice convicted of any combination of DUI, DUI per
3 se, OR DWAI, ~~or habitual user~~ for acts committed within a period of five
4 years;
5 (II) In the case of a minor driver, been convicted of DUI, DUI per
6 se, OR DWAI ~~or habitual user~~ committed while such driver was under
7 twenty-one years of age;
8 (i) Been convicted of DUI, DUI per se, OR DWAI ~~or habitual user~~
9 and has two previous convictions of any of such offenses. The license of
10 any driver shall be revoked for an indefinite period and shall only be
11 reissued upon proof to the department that said driver has completed a
12 level II alcohol and drug education and treatment program certified by the
13 unit in the department of human services that administers behavioral
14 health programs and services, including those related to mental health and
15 substance abuse, pursuant to section 42-4-1301.3 and that said driver has
16 demonstrated knowledge of the laws and driving ability through the
17 regular motor vehicle testing process. In no event shall such license be
18 reissued in less than two years.

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

21 **42-2-127. Authority to suspend license - to deny license - type**
22 **of conviction - points.** (1) (a) Except as provided in paragraph (b) of
23 subsection (8) of this section, the department has the authority to suspend
24 the license of any driver who, in accordance with the schedule of points
25 set forth in this section, has been convicted of traffic violations resulting
26 in the accumulation of twelve points or more within any twelve
27 consecutive months or eighteen points or more within any twenty-four

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

24 (5) Point system schedule:

25	Type of conviction	Points
26	(b) (II) Habitual user	12

27 (6) (b) For the purposes of this article, a plea of no contest

1 accepted by the court or the forfeiture of any bail or collateral deposited
2 to secure a defendant's appearance in court or the failure to appear in
3 court by a defendant charged with DUI, DUI per se, ~~habitual user~~, or
4 UDD who has been issued a summons and notice to appear pursuant to
5 section 42-4-1707 as evidenced by records forwarded to the department
6 in accordance with the provisions of section 42-2-124 shall be considered
7 as a conviction.

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

10 **42-2-129. Mandatory surrender of license or permit for**
11 **driving under the influence or with excessive alcoholic content.** Upon
12 a plea of guilty or nolo contendere, or a verdict of guilty by the court or
13 a jury, to DUI OR DUI per se, ~~or habitual user~~, or, for a person under
14 twenty-one years of age, to DUI, DUI per se, DWAI, ~~habitual user~~, or
15 UDD, the court shall require the offender to immediately surrender the
16 offender's driver's, minor driver's, or temporary driver's license or
17 instruction permit to the court. The court shall forward to the department
18 a notice of plea or verdict, on the form prescribed by the department,
19 together with the offender's license or permit, not later than ten days after
20 the surrender of the license or permit. Any person who does not
21 immediately surrender the license or permit to the court, except for good
22 cause shown, commits a class 2 misdemeanor traffic offense.

23 **SECTION 11.** In Colorado Revised Statutes, 42-2-132, **amend**
24 (2) (a) (III) and (2) (a) (IV) as follows:

25 **42-2-132. Period of suspension or revocation.** (2) (a) (III) In the
26 case of a minor driver whose license has been revoked as a result of one
27 conviction for DUI, DUI per se, DWAI, ~~habitual user~~, or UDD, the minor

1 driver, unless otherwise required after an evaluation made pursuant to
2 section 42-4-1301.3, must complete a level I alcohol and drug education
3 program certified by the unit in the department of human services that
4 administers behavioral health programs and services, including those
5 related to mental health and substance abuse.

6 (IV) Any person whose license or privilege to drive a motor
7 vehicle on the public highways has been revoked under section 42-2-125
8 (1) (g) (I) or (1) (i) or 42-2-203 where the revocation was due in part to
9 a DUI, DUI per se, OR DWAI or ~~habitual user~~ conviction shall be
10 required to present an affidavit stating that the person has obtained at the
11 person's own expense a signed lease agreement for the installation and
12 use of an approved ignition interlock device, as defined in section
13 42-2-132.5 (7), in each motor vehicle on which the person's name appears
14 on the registration and any other vehicle that the person may drive during
15 the period of the restricted license and a copy of each signed lease
16 agreement.

17 **SECTION 12.** In Colorado Revised Statutes, 42-2-132.5, **amend**
18 (1) (c) as follows:

19 **42-2-132.5. Mandatory and voluntary restricted licenses**
20 **following alcohol convictions - rules.** (1) The following persons shall
21 be required to hold a restricted license pursuant to this section for at least
22 one year prior to being eligible to obtain any other driver's license issued
23 under this article:

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

1 **SECTION 13.** In Colorado Revised Statutes, 42-2-138, **amend**
2 (1) (a), (1) (d) (I), and (1) (d) (II) as follows:

3 **42-2-138. Driving under restraint - penalty.** (1) (a) Any person
4 who drives a motor vehicle or off-highway vehicle upon any highway of
5 this state with knowledge that the person's license or privilege to drive,
6 either as a resident or a nonresident, is under restraint for any reason other
7 than conviction of DUI, DUI per se, DWAI, ~~habitual user~~, or UDD is
8 guilty of a misdemeanor. A court may sentence a person convicted of this
9 misdemeanor to imprisonment in the county jail for a period of not more
10 than six months and may impose a fine of not more than five hundred
11 dollars.

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

1 suspended sentence thereof; but, in a case where the defendant is
2 convicted although the defendant established that he or she had to drive
3 the motor vehicle in violation of this subparagraph (I) because of an
4 emergency, the mandatory jail sentence, if any, shall not apply, and, for
5 a first conviction, the court may impose a sentence of imprisonment in the
6 county jail for a period of not more than one year and, in the discretion of
7 the court, a fine of not more than one thousand dollars, and, for a second
8 or subsequent conviction, the court may impose a sentence of
9 imprisonment in the county jail for a period of not more than two years
10 and, in the discretion of the court, a fine of not more than three thousand
11 dollars.

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

26 **SECTION 14.** In Colorado Revised Statutes, 42-2-202, **amend**
27 (2) (a) (I) as follows:

1 **42-2-202. Habitual offenders - frequency and type of**
2 **violations.** (2) (a) An habitual offender is a person having three or more
3 convictions of any of the following separate and distinct offenses arising
4 out of separate acts committed within a period of seven years:

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

6 **SECTION 15.** In Colorado Revised Statutes, 42-2-405, **amend**
7 (3) (a) as follows:

8 **42-2-405. Driver's license disciplinary actions - grounds for**
9 **denial - suspension - revocation - disqualification.** (3) For purposes of
10 the imposition of restraints and sanctions against commercial driving
11 privileges:

12 (a) A conviction for DUI, DUI per se, OR DWAI, ~~or habitual user,~~
13 or a substantially similar law of any other state pertaining to drinking and
14 driving, or an administrative determination of a violation of section
15 42-2-126 (3) (a) or (3) (b) shall be deemed driving under the influence;
16 and

17 **SECTION 16.** In Colorado Revised Statutes, 42-4-1301.1,
18 **amend** (2) (a) (I) and (2) (b) (I) as follows:

19 **42-4-1301.1. Expressed consent for the taking of blood, breath,**
20 **urine, or saliva sample - testing.** (2) (a) (I) A person who drives a
21 motor vehicle upon the streets and highways and elsewhere throughout
22 this state shall be required to take and complete, and to cooperate in the
23 taking and completing of, any test or tests of the person's breath or blood
24 for the purpose of determining the alcoholic content of the person's blood
25 or breath when so requested and directed by a law enforcement officer
26 having probable cause to believe that the person was driving a motor
27 vehicle in violation of the prohibitions against DUI, DUI per se, DWAI,

1 ~~habitual user~~, or UDD. Except as otherwise provided in this section, if a
2 person who is twenty-one years of age or older requests that the test be a
3 blood test, then the test shall be of his or her blood; but, if the person
4 requests that a specimen of his or her blood not be drawn, then a
5 specimen of the person's breath shall be obtained and tested. A person
6 who is under twenty-one years of age shall be entitled to request a blood
7 test unless the alleged violation is UDD, in which case a specimen of the
8 person's breath shall be obtained and tested, except as provided in
9 subparagraph (II) of this paragraph (a).

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

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

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

1 **drugs - repeal. (3) First offenses - DUI and DUI per se.** (a) Except as
2 otherwise provided in subsections (5) and (6) of this section, a person
3 who is convicted of DUI OR DUI per se ~~or habitual user~~ shall be punished
4 by:

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

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

1 which the person is imprisoned and only for the purpose of:

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

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

27 (10) **Additional costs and surcharges.** In addition to the

1 penalties prescribed in this section:

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

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

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

19 (d) (I) Persons convicted of DUI, DUI per se, AND DWAI ~~and~~
20 ~~habitual user~~ are subject to a surcharge of at least one dollar but no more
21 than ten dollars for programs to fund efforts to address alcohol and
22 substance abuse problems among persons in rural areas. The surcharge
23 shall be mandatory, and the court shall not have discretion to suspend or
24 waive the surcharge; except that the court may suspend or waive the
25 surcharge if the court determines that a person is indigent. Any moneys
26 collected for the surcharge shall be transmitted to the state treasurer, who
27 shall credit the same to the rural alcohol and substance abuse cash fund

1 created in section 27-80-117 (3), C.R.S.

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

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

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

14 **42-4-1702. Alcohol- or drug-related traffic offenses - collateral**
15 **attack.** (1) Except as otherwise provided in paragraph (b) of this
16 subsection (1), no person against whom a judgment has been entered for
17 DUI, DUI per se, DWAI, ~~habitual user~~, or UDD shall collaterally attack
18 the validity of that judgment unless such attack is commenced within six
19 months after the date of entry of the judgment.

20 **SECTION 19.** In Colorado Revised Statutes, 42-4-1705, **amend**
21 (1) (c) as follows:

22 **42-4-1705. Person arrested to be taken before the proper**
23 **court.** (1) Whenever a person is arrested for any violation of this article
24 punishable as a misdemeanor, the arrested person shall be taken without
25 unnecessary delay before a county judge who has jurisdiction of such
26 offense as provided by law, in any of the following cases:

27 (c) When the person is arrested and charged with DUI, DUI per

1 se, ~~habitual user~~, or UDD;

2 **SECTION 20.** In Colorado Revised Statutes, 42-4-1715, **amend**
3 (1) (b) (II) and (4) (a) (II) as follows:

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

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

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

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

18 **42-7-408. Proof of financial responsibility - methods of giving**
19 **proof - duration - exception.** (1) (c) Notwithstanding the three-year
20 requirement in paragraph (b) of this subsection (1):

21 (I) If an insured has been found guilty of DUI, DUI per se, OR
22 DWAI or ~~habitual user~~ or if the insured's license has been revoked
23 pursuant to section 42-2-126, other than a revocation under section
24 42-2-126 (3) (b) or (3) (e), only one time and no accident was involved
25 in such offense, proof of financial responsibility for the future shall be
26 required to be maintained only for as long as the insured's driving
27 privilege is ordered to be under restraint, up to a maximum of three years.

1 The time period for maintaining the future proof of liability insurance
2 shall begin at the time the driver reinstates his or her driving privilege.

3 **SECTION 22.** In Colorado Revised Statutes, 42-2-132.5, **amend**
4 **as amended by House Bill 12-1168**, enacted in the second regular
5 session of the sixty-eighth general assembly, (1) (a), (1) (c), and (4) (c) as
6 follows:

7 **42-2-132.5. Mandatory and voluntary restricted licenses**
8 **following alcohol convictions - rules.** (1) The following persons shall
9 be required to hold an interlock-restricted license pursuant to this section
10 for at least one year following reinstatement prior to being eligible to
11 obtain any other driver's license issued under this article:

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

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

18 (4) **Persons who may acquire an interlock-restricted license**
19 **prior to serving a full-term revocation.** (c) In order to be eligible for
20 early reinstatement pursuant to this subsection (4), a person who has been
21 designated an habitual offender under the provisions of section 42-2-202
22 must have at least one conviction for DUI, DUI per se, OR DWAI or
23 ~~habitual user~~ under section 42-4-1301, and no contributing violations
24 other than violations for driving under restraint under section 42-2-138
25 or reckless driving under section 42-4-1401.

26 **SECTION 23. Appropriation.** (1) In addition to any other
27 appropriation, there is hereby appropriated, out of any moneys in the

1 general fund not otherwise appropriated, to the judicial department, for
2 the fiscal year beginning July 1, 2012, the sum of \$12,000 so much
3 thereof as may be necessary, for allocation to the office of the state public
4 defender for mandated costs related to the implementation of this act.

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

13 (3) In addition to any other appropriation, there is hereby
14 appropriated to the governor - lieutenant governor - state planning and
15 budgeting, for the fiscal year beginning July 1, 2012, the sum of \$16,280,
16 or so much thereof as may be necessary, for allocation to the office of
17 information technology, for the provision of computer center services for
18 the department of revenue related to the implementation of this act. Said
19 sum is from reappropriated funds received from the department of
20 revenue out of the appropriation made in subsection (2) of this section.

21 **SECTION 24. Effective date.** (1) Except as otherwise provided
22 in this section, this act takes effect upon passage.

23 (2) Section 12 of this act takes effect only if House Bill 12-1168
24 does not become law.

25 (3) Section 22 of this act takes effect only if House Bill 12-1168
26 becomes law, in which case section 22 of this act takes effect either upon
27 the effective date of this act or House Bill 12-1168, whichever is later.

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