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HOUSE BILL 17-1288

BY REPRESENTATIVE(S) Saine and Foote, Becker K., Benavidez, Carver, Gray, Lundeen, Willett, Wist, Young, Bridges, Buckner, Covarrubias, Danielson, Esgar, Exum, Ginal, Hamner, Hansen, Herod, Kennedy, Kraft-Tharp, Lawrence, Lebsock, Liston, McKean, Michaelson Jenet, Mitsch Bush, Navarro, Neville P., Nordberg, Salazar, Valdez, Van Winkle, Williams D., Wilson, Winter;
also SENATOR(S) Cooke and Court, Crowder, Fields, Gardner, Kerr, Martinez Humenik, Merrifield, Priola, Scott, Smallwood, Tate, Todd, Williams A.

CONCERNING THE PENALTIES FOR DUI OFFENDERS WHO COMMIT THEIR
FOURTH AND SUBSEQUENT DUI OFFENSES.

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

SECTION 1. In Colorado Revised Statutes, 42-4-1307, **add** (6.5) as follows:

42-4-1307. Penalties for traffic offenses involving alcohol and drugs - legislative declaration - definitions - repeal. (6.5) **Felony offenses.** (a) A PERSON WHO COMMITS A FELONY DUI, DUI PER SE, OR DWAI OFFENSE SHALL BE SENTENCED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 18-1.3-401 AND THIS SUBSECTION (6.5).

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) IF THE COURT SENTENCES THE DEFENDANT TO A TERM OF PROBATION AS PROVIDED BY SECTION 18-1.3-202, THE COURT SHALL ORDER AS A CONDITION OF PROBATION ONE OF THE FOLLOWING:

(I) REQUIRE THE DEFENDANT TO SERVE AT LEAST NINETY DAYS BUT NOT MORE THAN ONE HUNDRED EIGHTY DAYS IMPRISONMENT IN THE COUNTY JAIL. DURING THE MANDATORY NINETY-DAY PERIOD OF IMPRISONMENT, THE DEFENDANT IS NOT ELIGIBLE FOR DEDUCTIONS OF HIS OR HER SENTENCE PURSUANT TO SECTION 17-26-109 OR FOR TRUSTY PRISONER STATUS PURSUANT TO SECTION 17-26-109 (1)(c); EXCEPT THAT A DEFENDANT RECEIVES CREDIT FOR ANY TIME THAT HE OR SHE SERVED IN CUSTODY FOR THE VIOLATION PRIOR TO HIS OR HER CONVICTION. DURING THIS MANDATORY PERIOD OF IMPRISONMENT, THE COURT DOES NOT HAVE DISCRETION TO EMPLOY ANY SENTENCING ALTERNATIVES DESCRIBED IN SECTION 18-1.3-106.

(II) REQUIRE THE DEFENDANT TO SERVE AT LEAST ONE HUNDRED TWENTY DAYS BUT NOT MORE THAN TWO YEARS OF IMPRISONMENT IN THE COUNTY JAIL THROUGH PARTICIPATION IN A PROGRAM PURSUANT TO SECTION 18-1.3-106 (1)(a)(II) OR (1)(a)(IV) IF THE PROGRAM IS AVAILABLE THROUGH THE COUNTY IN WHICH THE DEFENDANT IS IMPRISONED AND ONLY FOR THE PURPOSES OF CONTINUING A POSITION OF EMPLOYMENT THAT THE DEFENDANT HELD AT THE TIME OF SENTENCING FOR THE VIOLATION OR FOR CONTINUING ATTENDANCE AT AN EDUCATIONAL INSTITUTION AT WHICH THE DEFENDANT WAS ENROLLED AT THE TIME OF SENTENCING FOR THE VIOLATION. DURING THE MANDATORY ONE-HUNDRED-TWENTY-DAY PERIOD OF IMPRISONMENT, THE DEFENDANT IS NOT ELIGIBLE FOR DEDUCTIONS OF HIS OR HER SENTENCE PURSUANT TO SECTION 17-26-109 OR FOR TRUSTY PRISONER STATUS PURSUANT TO SECTION 17-26-109 (1)(c); EXCEPT THAT A DEFENDANT RECEIVES CREDIT FOR ANY TIME THAT HE OR SHE SERVED IN CUSTODY FOR THE VIOLATION PRIOR TO HIS OR HER CONVICTION. DURING THIS MANDATORY PERIOD OF IMPRISONMENT, THE COURT DOES NOT HAVE DISCRETION TO EMPLOY ANY OTHER SENTENCING ALTERNATIVES DESCRIBED IN SECTION 18-1.3-106; EXCEPT THAT A COURT MAY GRANT PERMISSION FOR A DEFENDANT TO LEAVE THE JAIL TO OBTAIN MEDICAL TREATMENT, PURSUANT TO SECTION 18-1.3-106 (1)(a)(V).

(c) ADDITIONALLY, IF THE COURT SENTENCES THE DEFENDANT TO A TERM OF PROBATION AS PROVIDED BY SECTION 18-1.3-202, THEN, AS A

CONDITION OF PROBATION, THE COURT SHALL:

(I) REQUIRE THE DEFENDANT TO COMPLETE AT LEAST FORTY-EIGHT HOURS BUT NOT MORE THAN ONE HUNDRED TWENTY HOURS OF USEFUL PUBLIC SERVICE, WHICH MAY NOT BE SUSPENDED; AND

(II) SENTENCE THE DEFENDANT IN ACCORDANCE WITH SUBSECTION (7)(b) OF THIS SECTION.

(d) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (6.5)(a) OF THIS SECTION, BEFORE THE IMPOSITION OF ANY SENTENCE TO THE DEPARTMENT OF CORRECTIONS FOR A FELONY DUI, DUI PER SE, OR DWAI OFFENSE, AT SENTENCING OR AT RESENTENCING AFTER A REVOCATION OF PROBATION OR A COMMUNITY CORRECTIONS SENTENCE, THE COURT SHALL CONSIDER ALL THE FACTORS DESCRIBED IN SUBSECTION (6.5)(e) OF THIS SECTION.

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

SECTION 2. In Colorado Revised Statutes, 42-4-1301, **repeal** (1)(k) as follows:

42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - definitions - penalties.
(1) (k) ~~(I) If a defendant is convicted of a class 4 felony pursuant to this section, the court shall sentence the person in accordance with the provisions of section 18-1.3-401, C.R.S.~~

~~(H)(A) Notwithstanding the provisions of subparagraph (I) of this paragraph (k), before the imposition of any sentence to the department of corrections for a felony DUI, DUI per se, or DWAI offense, at sentencing~~

~~or at resentencing after a revocation of probation or a community corrections sentence, the court shall consider all the factors described in sub-subparagraph (B) of this subparagraph (H):~~

~~(B) If the court sentences the defendant to the department of corrections for a felony DUI, DUI per se, or DWAI offense, it must determine that incarceration is the most suitable option given the facts and circumstances of the case, including the defendant's willingness to participate in treatment. Additionally, the court shall consider whether all other reasonable and appropriate sanctions and responses to the violation that are available to the court have been exhausted, do not appear likely to be successful if tried, or present an unacceptable risk to public safety.~~

SECTION 3. In Colorado Revised Statutes, 18-1.3-202, **amend** (1) as follows:

18-1.3-202. Probationary power of court. (1)(a) When it appears to the satisfaction of the court that the ends of justice and the best interest of the public, as well as the defendant, will be served thereby, the court may grant the defendant probation for such period and upon such terms and conditions as it deems best. The length of probation shall be subject to the discretion of the court and may exceed the maximum period of incarceration authorized for the classification of the offense of which the defendant is convicted but shall not exceed five years for any misdemeanor or petty offense. If the court chooses to grant the defendant probation, the order placing the defendant on probation shall take effect upon entry and, if any appeal is brought, shall remain in effect pending review by an appellate court unless the court grants a stay of probation pursuant to section 16-4-201. C.R.S. Unless an appeal is filed that raises a claim that probation was granted contrary to the provisions of this title, the trial court shall retain jurisdiction of the case for the purpose of adjudicating complaints filed against the defendant that allege a violation of the terms and conditions of probation. In addition to imposing other conditions, the court has the power to commit the defendant to any jail operated by the county or city and county in which the offense was committed during such time or for such intervals within the period of probation as the court determines. EXCEPT AS DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION, the aggregate length of any such commitment whether continuous or at designated intervals ~~shall~~ MAY not exceed ninety days for a felony, sixty days for a misdemeanor, or ten days for a petty offense unless it is a part of

a work release program pursuant to section 18-1.3-207. That the defendant submit to commitment imposed under this section ~~shall be~~ IS deemed a condition of probation.

(b) FOR A DEFENDANT WHO IS CONVICTED OF A FELONY OFFENSE DESCRIBED IN SECTION 42-4-1301 (1)(a), (1)(b), OR (2)(a), THE AGGREGATE LENGTH OF ANY COMMITMENT TO A COUNTY JAIL IS DETERMINED AS PROVIDED IN SECTION 42-4-1307 (6.5)(b).

SECTION 4. Applicability. This act applies to offenses committed on or after the effective date of this act.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO