

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0083.01 Richard Sweetman x4333

HOUSE BILL 17-1288

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A BILL FOR AN ACT

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

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://leg.colorado.gov/>.)

Under current law, a person who commits a fourth or subsequent DUI offense commits a class 4 felony. If a court sentences the person to probation, the bill requires the court to choose one of the following sentencing options:

- ! Require the defendant to serve at least 90 days but not more than 180 days imprisonment in the county jail. During the

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.

mandatory 90-day period of imprisonment, the defendant is not eligible for good-time deductions of his or her sentence or for trusty prisoner status; 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.

- ! Require the defendant to serve at least 120 days but not more than 2 years of imprisonment in the county jail through participation in an alternative sentencing program if such programs are available through the county in which the defendant is imprisoned and only for certain purposes. During the mandatory 120-day period of imprisonment, the defendant is not eligible for good-time deductions of his or her sentence or for trusty prisoner status; 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.

Additionally, the bill states that if the court sentences such an offender to a term of probation, the court shall:

- ! Require the defendant to complete at least 48 hours but not more than 120 hours of useful public service, which may not be suspended;
- ! Include, as a condition of the defendant's probation, a requirement that the defendant complete a level II alcohol and drug driving safety education or treatment program at the defendant's own expense; and
- ! Consider imposing certain other conditions of probation.

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

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

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

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

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

12 (II) REQUIRE THE DEFENDANT TO SERVE AT LEAST ONE HUNDRED
13 TWENTY DAYS BUT NOT MORE THAN TWO YEARS OF IMPRISONMENT IN THE
14 COUNTY JAIL THROUGH PARTICIPATION IN A PROGRAM PURSUANT TO
15 SECTION 18-1.3-106 (1)(a)(II), (1)(a)(IV), OR (1)(a)(V) IF THE PROGRAM
16 IS AVAILABLE THROUGH THE COUNTY IN WHICH THE DEFENDANT IS
17 IMPRISONED AND ONLY FOR THE PURPOSES OF CONTINUING A POSITION OF
18 EMPLOYMENT THAT THE DEFENDANT HELD AT THE TIME OF SENTENCING
19 FOR THE VIOLATION OR FOR CONTINUING ATTENDANCE AT AN
20 EDUCATIONAL INSTITUTION AT WHICH THE DEFENDANT WAS ENROLLED AT
21 THE TIME OF SENTENCING FOR THE VIOLATION. DURING THE MANDATORY
22 ONE-HUNDRED-TWENTY-DAY PERIOD OF IMPRISONMENT, THE DEFENDANT
23 IS NOT ELIGIBLE FOR DEDUCTIONS OF HIS OR HER SENTENCE PURSUANT TO
24 SECTION 17-26-109 OR FOR TRUSTY PRISONER STATUS PURSUANT TO
25 SECTION 17-26-109 (1)(c); EXCEPT THAT A DEFENDANT RECEIVES CREDIT
26 FOR ANY TIME THAT HE OR SHE SERVED IN CUSTODY FOR THE VIOLATION
27 PRIOR TO HIS OR HER CONVICTION. DURING THIS MANDATORY PERIOD OF

1 IMPRISONMENT, THE COURT DOES NOT HAVE DISCRETION TO EMPLOY ANY
2 OTHER SENTENCING ALTERNATIVES DESCRIBED IN SECTION 18-1.3-106.

3 (c) ADDITIONALLY, IF THE COURT SENTENCES THE DEFENDANT TO
4 A TERM OF PROBATION AS PROVIDED BY SECTION 18-1.3-202, THE COURT
5 SHALL:

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

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

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

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

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

3 **42-4-1301. Driving under the influence - driving while**
4 **impaired - driving with excessive alcoholic content - definitions -**
5 **penalties.** (1) (k) ~~(I) If a defendant is convicted of a class 4 felony~~
6 ~~pursuant to this section, the court shall sentence the person in accordance~~
7 ~~with the provisions of section 18-1.3-401, C.R.S.~~

8 ~~(H)(A) Notwithstanding the provisions of subparagraph (I) of this~~
9 ~~paragraph (k), before the imposition of any sentence to the department of~~
10 ~~corrections for a felony DUI, DUI per se, or DWAI offense, at sentencing~~
11 ~~or at resentencing after a revocation of probation or a community~~
12 ~~corrections sentence, the court shall consider all the factors described in~~
13 ~~sub-subparagraph (B) of this subparagraph (H).~~

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

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

24 **18-1.3-202. Probationary power of court.** (1) (a) When it
25 appears to the satisfaction of the court that the ends of justice and the best
26 interest of the public, as well as the defendant, will be served thereby, the
27 court may grant the defendant probation for such period and upon such

1 terms and conditions as it deems best. The length of probation shall be
2 subject to the discretion of the court and may exceed the maximum period
3 of incarceration authorized for the classification of the offense of which
4 the defendant is convicted but shall not exceed five years for any
5 misdemeanor or petty offense. If the court chooses to grant the defendant
6 probation, the order placing the defendant on probation shall take effect
7 upon entry and, if any appeal is brought, shall remain in effect pending
8 review by an appellate court unless the court grants a stay of probation
9 pursuant to section 16-4-201. ~~C.R.S.~~ Unless an appeal is filed that raises
10 a claim that probation was granted contrary to the provisions of this title,
11 the trial court shall retain jurisdiction of the case for the purpose of
12 adjudicating complaints filed against the defendant that allege a violation
13 of the terms and conditions of probation. In addition to imposing other
14 conditions, the court has the power to commit the defendant to any jail
15 operated by the county or city and county in which the offense was
16 committed during such time or for such intervals within the period of
17 probation as the court determines. EXCEPT AS DESCRIBED IN SUBSECTION
18 (1)(b) OF THIS SECTION, the aggregate length of any such commitment
19 whether continuous or at designated intervals ~~shall~~ MAY not exceed ninety
20 days for a felony, sixty days for a misdemeanor, or ten days for a petty
21 offense unless it is a part of a work release program pursuant to section
22 18-1.3-207. That the defendant submit to commitment imposed under this
23 section ~~shall be~~ IS deemed a condition of probation.

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

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

3 **SECTION 5. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly (August
6 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
7 referendum petition is filed pursuant to section 1 (3) of article V of the
8 state constitution against this act or an item, section, or part of this act
9 within such period, then the act, item, section, or part will not take effect
10 unless approved by the people at the general election to be held in
11 November 2018 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.