

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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
11 **ORDER AS A CONDITION OF PROBATION 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) OR (1)(a)(IV) IF THE PROGRAM IS
16 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 EXCEPT THAT A COURT MAY GRANT PERMISSION FOR A DEFENDANT TO
4 LEAVE THE JAIL TO OBTAIN MEDICAL TREATMENT, PURSUANT TO SECTION
5 18-1.3-106 (1)(a)(V).

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

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

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

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

21 (e) IF THE COURT SENTENCES THE DEFENDANT TO THE
22 DEPARTMENT OF CORRECTIONS FOR A FELONY DUI, DUI PER SE, OR DWAI
23 OFFENSE, IT MUST DETERMINE THAT INCARCERATION IS THE MOST
24 SUITABLE OPTION GIVEN THE FACTS AND CIRCUMSTANCES OF THE CASE,
25 INCLUDING THE DEFENDANT'S WILLINGNESS TO PARTICIPATE IN
26 TREATMENT. ADDITIONALLY, THE COURT SHALL CONSIDER WHETHER ALL
27 OTHER REASONABLE AND APPROPRIATE SANCTIONS AND RESPONSES TO

1 THE VIOLATION THAT ARE AVAILABLE TO THE COURT HAVE BEEN
2 EXHAUSTED, DO NOT APPEAR LIKELY TO BE SUCCESSFUL IF TRIED, OR
3 PRESENT AN UNACCEPTABLE RISK TO PUBLIC SAFETY.

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

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

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

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

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

27 **18-1.3-202. Probationary power of court.** (1) (a) When it

1 appears to the satisfaction of the court that the ends of justice and the best
2 interest of the public, as well as the defendant, will be served thereby, the
3 court may grant the defendant probation for such period and upon such
4 terms and conditions as it deems best. The length of probation shall be
5 subject to the discretion of the court and may exceed the maximum period
6 of incarceration authorized for the classification of the offense of which
7 the defendant is convicted but shall not exceed five years for any
8 misdemeanor or petty offense. If the court chooses to grant the defendant
9 probation, the order placing the defendant on probation shall take effect
10 upon entry and, if any appeal is brought, shall remain in effect pending
11 review by an appellate court unless the court grants a stay of probation
12 pursuant to section 16-4-201. ~~C.R.S.~~ Unless an appeal is filed that raises
13 a claim that probation was granted contrary to the provisions of this title,
14 the trial court shall retain jurisdiction of the case for the purpose of
15 adjudicating complaints filed against the defendant that allege a violation
16 of the terms and conditions of probation. In addition to imposing other
17 conditions, the court has the power to commit the defendant to any jail
18 operated by the county or city and county in which the offense was
19 committed during such time or for such intervals within the period of
20 probation as the court determines. EXCEPT AS DESCRIBED IN SUBSECTION
21 (1)(b) OF THIS SECTION, the aggregate length of any such commitment
22 whether continuous or at designated intervals ~~shall~~ MAY not exceed ninety
23 days for a felony, sixty days for a misdemeanor, or ten days for a petty
24 offense unless it is a part of a work release program pursuant to section
25 18-1.3-207. That the defendant submit to commitment imposed under this
26 section ~~shall be~~ IS deemed a condition of probation.

27 (b) FOR A DEFENDANT WHO IS CONVICTED OF A FELONY OFFENSE

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

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

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