

CHAPTER 1

---

**TRANSPORTATION**

---

**SENATE BILL 01S2-008**

BY SENATOR(S) Hagedorn, Chlouber, and Isgar;  
also REPRESENTATIVE(S) Alexander, Coleman, Daniel, Dean, Fairbank, Groff, Grossman, Hefley, Hoppe, Lee, Mace,  
Romanoff, Sanchez, Schultheis, Scott, Spradley, Swenson, Tochtrop, Vigil, Weddig, and Young.

**AN ACT**

**CONCERNING CLARIFICATION OF THE APPLICABLE PENALTIES FOR OFFENSES INVOLVING THE  
OPERATION OF A MOTOR VEHICLE BY A PERSON WHO HAS CONSUMED ALCOHOL.**

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

**SECTION 1. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) An amendment to Colorado's drunk driving laws, enacted by Senate Bill 01-168, was intended as a conforming amendment only but may inadvertently have created ambiguity in the applicable penalties for the crimes of vehicular assault, vehicular homicide, and second and subsequent convictions for driving under the influence, driving while ability impaired, and driving with excessive alcoholic content;

(b) The applicable penalties for such crimes were never intended to be, and never were, reduced as a result of any provision in Senate Bill 01-168, and the penalties set forth for such crimes in title 18, C.R.S., have at all relevant times continued to apply; and

(c) This act is intended to remove any such ambiguity and to clarify the existing system of penalties for such offenses.

**SECTION 2.** 42-2-144 (1), Colorado Revised Statutes, is amended to read:

**42-2-144. Reporting by certified level II alcohol and drug education and treatment providers - notice of administrative remedies against a driver's license - rules.** (1) The department shall require all providers of level II alcohol and

---

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

drug education and treatment programs certified by the division of alcohol and drug abuse pursuant to section 42-4-1301 (10) to provide quarterly reports to the department about each person who is enrolled and who ~~is~~ HAS FILED PROOF OF SUCH ENROLLMENT WITH THE DEPARTMENT AS REQUIRED BY SECTION 42-2-126 (7) (c) (III).

~~(a) Required to complete level II alcohol and drug education and treatment pursuant to section 42-2-126 (7) (c) (II); and~~

~~(b) Charged with a subsequent alcohol or drug-related driving offense, or both.~~

**SECTION 3.** 42-4-1301 (9) (a), (9) (b), and (9) (f) (I), Colorado Revised Statutes, are amended to read:

**42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - tests - penalties - useful public service program - alcohol and drug driving safety program.** (9) (a) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (a), every person who is convicted of a violation of paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section shall be punished by imprisonment in the county jail for not less than five days nor more than one year, and, in addition, the court may impose a fine of not less than three hundred dollars nor more than one thousand dollars. Except as provided in subparagraph (II) of paragraph (f) of this subsection (9), the minimum period of imprisonment provided for such violation shall be mandatory. In addition to any other penalty that is imposed, every person who is convicted of a violation to which this subparagraph (I) applies shall perform not less than forty-eight hours nor more than ninety-six hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(II) UPON CONVICTION OF A VIOLATION DESCRIBED IN SUB-SUBPARAGRAPH (A) OR (B) OF THIS SUBPARAGRAPH (II), an offender shall be punished by imprisonment in the county jail for not less than ninety days nor more than one year, and, in addition, the court may impose a fine of not less than five hundred dollars nor more than one thousand five hundred dollars. ~~upon a conviction of a violation of any of the following:~~ THE MINIMUM PERIOD OF IMPRISONMENT PROVIDED FOR SUCH VIOLATION SHALL BE MANDATORY, BUT THE COURT MAY SUSPEND UP TO EIGHTY DAYS OF THE PERIOD OF IMPRISONMENT IF THE OFFENDER COMPLIES WITH THE PROVISIONS OF SUBPARAGRAPH (I) OF PARAGRAPH (f) OF THIS SUBSECTION (9). IN ADDITION TO ANY OTHER PENALTY THAT IS IMPOSED, EVERY PERSON WHO IS CONVICTED OF A VIOLATION DESCRIBED IN SUB-SUBPARAGRAPH (A) OR (B) OF THIS SUBPARAGRAPH (II) SHALL PERFORM NOT LESS THAN SIXTY HOURS NOR MORE THAN ONE HUNDRED TWENTY HOURS OF USEFUL PUBLIC SERVICE. THE PERFORMANCE OF THE MINIMUM PERIOD OF SERVICE SHALL BE MANDATORY, AND THE COURT SHALL HAVE NO DISCRETION TO SUSPEND THE MANDATORY MINIMUM PERIOD OF PERFORMANCE OF SUCH SERVICE. THIS SUBPARAGRAPH (II) SHALL APPLY TO:

(A) A VIOLATION OF paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section, which violation occurred at any time after the date of a previous violation, for which there has been a conviction, of paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section, OR OF SECTION

18-3-106(1)(b)(I) OR 18-3-205(1)(b)(I), C.R.S., or OF driving while such person's driver's license is revoked WAS UNDER RESTRAINT PURSUANT TO SECTION 42-2-138; OR

~~(B) Section 18-3-106(1)(b)(I), C.R.S.:~~ A VIOLATION OF PARAGRAPH (a) OR (b) OF SUBSECTION (1) OF THIS SECTION OR OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION WHEN THE AMOUNT OF ALCOHOL IN SUCH PERSON'S BLOOD, AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD OR BREATH, WAS 0.20 OR MORE GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR 0.20 OR MORE GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AT THE TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING.

~~(C) Section 18-3-205(1)(b)(I), C.R.S.; or~~

~~(D) Paragraph (a) of subsection (1) of this section, driving under the influence, or paragraph (b) of subsection (1) of this section, driving while ability impaired, and the amount of alcohol in such person's blood, as shown by analysis of the person's blood or breath, was 0.20 or more grams of alcohol per one hundred milliliters of blood or 0.20 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving.~~

~~(III) The minimum period of imprisonment as provided for a violation described in subparagraph (H) of this paragraph (a) shall be mandatory, but the court may suspend up to eighty days of the period of imprisonment if the offender complies with the provisions of subparagraph (I) of paragraph (f) of this subsection (9). In addition to any other penalty that is imposed, every person who is convicted of a violation to which subparagraph (H) of this paragraph (a) and this subparagraph (III) apply shall perform not less than sixty hours nor more than one hundred twenty hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.~~ UPON A CONVICTION OF A VIOLATION OF PARAGRAPH (a) OR (c) OF SUBSECTION (1) OR PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, WHICH VIOLATION OCCURRED AT ANY TIME AFTER THE DATE OF A PREVIOUS VIOLATION, FOR WHICH THERE HAS BEEN A CONVICTION, OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, AN OFFENDER SHALL BE PUNISHED BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT LESS THAN SEVENTY DAYS NOR MORE THAN ONE YEAR, AND, IN ADDITION, THE COURT MAY IMPOSE A FINE OF NOT LESS THAN FOUR HUNDRED FIFTY DOLLARS NOR MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS. THE MINIMUM PERIOD OF IMPRISONMENT PROVIDED FOR SUCH VIOLATION SHALL BE MANDATORY, BUT THE COURT MAY SUSPEND UP TO SIXTY-THREE DAYS OF THE PERIOD OF IMPRISONMENT IF THE OFFENDER COMPLIES WITH THE PROVISIONS OF SUBPARAGRAPH (I) OF PARAGRAPH (f) OF THIS SUBSECTION (9). IN ADDITION TO ANY OTHER PENALTY THAT IS IMPOSED, EVERY PERSON WHO IS CONVICTED OF SUCH VIOLATION SHALL PERFORM NOT LESS THAN FIFTY-SIX HOURS NOR MORE THAN ONE HUNDRED TWELVE HOURS OF USEFUL PUBLIC SERVICE. THE PERFORMANCE OF THE MINIMUM PERIOD OF SERVICE SHALL BE MANDATORY, AND THE COURT SHALL HAVE NO DISCRETION TO SUSPEND THE MANDATORY MINIMUM PERIOD OF PERFORMANCE OF SUCH SERVICE.

~~(IV) An offender shall be punished by imprisonment in the county jail for not less than seventy days nor more than one year, and, in addition, the court may impose a~~

~~fine of not less than four hundred fifty dollars nor more than one thousand five hundred dollars upon conviction of a violation of any of the following:~~

~~(A) Paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section, which violation occurred at any time after the date of a previous violation for which there has been a conviction of paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section;~~

~~(B) Section 18-3-106 (1) (b) (I), C.R.S.;~~

~~(C) Section 18-3-205 (1) (b) (I), C.R.S.; or~~

~~(D) Paragraph (a) of subsection (1) of this section, driving under the influence, or paragraph (b) of subsection (1) of this section, driving while ability impaired, and the amount of alcohol in such person's blood, as shown by analysis of the person's blood or breath, was 0.20 or more grams of alcohol per one hundred milliliters of blood or 0.20 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving.~~

~~(V) The minimum period of imprisonment as provided for a violation described in subparagraph (IV) of this paragraph (a) shall be mandatory, but the court may suspend up to sixty-three days of the period of imprisonment if the offender complies with the provisions of subparagraph (I) of paragraph (f) of this subsection (9). In addition to any other penalty that is imposed, every person who is convicted of a violation to which subparagraph (IV) of this paragraph (a) and this subparagraph (V) apply shall perform not less than fifty-six hours nor more than one hundred twelve hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.~~

~~(b) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (b), every person who is convicted of a violation of paragraph (b) of subsection (1) of this section shall be punished by imprisonment in the county jail for not less than two days nor more than one hundred eighty days, and, in addition, the court may impose a fine of not less than one hundred dollars nor more than five hundred dollars. Except as provided in subparagraph (II) of paragraph (f) of this subsection (9), the minimum period of imprisonment provided for such violation shall be mandatory. In addition to any other penalty which THAT is imposed, every person who is convicted of a violation to which this subparagraph (I) applies shall perform not less than twenty-four hours nor more than forty-eight hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.~~

~~(II) UPON CONVICTION OF A SECOND OR SUBSEQUENT VIOLATION OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, an offender shall be punished by imprisonment in the county jail for not less than forty-five days nor more than one year, and, in addition, the court may impose a fine of not less than three hundred dollars nor more than one thousand dollars. upon conviction of a violation of any of the following: THE MINIMUM PERIOD OF IMPRISONMENT AS PROVIDED FOR SUCH VIOLATION SHALL BE MANDATORY, BUT THE COURT MAY SUSPEND UP TO FORTY DAYS~~

OF THE PERIOD OF IMPRISONMENT IF THE OFFENDER COMPLIES WITH THE PROVISIONS OF SUBPARAGRAPH (I) OF PARAGRAPH (f) OF THIS SUBSECTION (9). IN ADDITION TO ANY OTHER PENALTY THAT IS IMPOSED, EVERY PERSON WHO IS CONVICTED OF A VIOLATION TO WHICH THIS SUBPARAGRAPH (II) APPLIES SHALL PERFORM NOT LESS THAN FORTY-EIGHT HOURS NOR MORE THAN NINETY-SIX HOURS OF USEFUL PUBLIC SERVICE. THE PERFORMANCE OF THE MINIMUM PERIOD OF SERVICE SHALL BE MANDATORY, AND THE COURT SHALL HAVE NO DISCRETION TO SUSPEND THE MANDATORY MINIMUM PERIOD OF PERFORMANCE OF SUCH SERVICE.

~~(A) Paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section, which violation occurred at any time after the date of a previous violation for which there has been a conviction of paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section;~~

~~(B) Section 18-3-106 (1) (b) (I), C.R.S.;~~

~~(C) Section 18-3-205 (1) (b) (I), C.R.S.; or~~

~~(D) Paragraph (a) of subsection (1) of this section, driving under the influence, or paragraph (b) of subsection (1) of this section, driving while ability impaired, and the amount of alcohol in such person's blood, as shown by analysis of the person's blood or breath, was 0.20 or more grams of alcohol per one hundred milliliters of blood or 0.20 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving.~~

~~(III) The minimum period of imprisonment as provided for a violation described in subparagraph (II) of this paragraph (b) shall be mandatory, but the court may suspend up to forty days of the period of imprisonment if the offender complies with the provisions of subparagraph (I) of paragraph (f) of this subsection (9). In addition to any other penalty that is imposed, every person who is convicted of a violation to which subparagraph (II) of this paragraph (b) and this subparagraph (III) apply shall perform not less than forty-eight hours nor more than ninety-six hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.~~ UPON CONVICTION OF A VIOLATION OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION, WHICH VIOLATION OCCURRED AT ANY TIME AFTER THE DATE OF A PREVIOUS VIOLATION, FOR WHICH THERE HAS BEEN A CONVICTION, OF PARAGRAPH (a) OR (c) OF SUBSECTION (1) OR PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION, OR OF SECTION 18-3-106 (1) (b) (I) OR 18-3-205 (1) (b) (I), C.R.S., OR OF DRIVING WHILE SUCH PERSON'S DRIVER'S LICENSE WAS UNDER RESTRAINT AS DESCRIBED IN SECTION 42-2-138 (4) (b), AN OFFENDER SHALL BE PUNISHED BY IMPRISONMENT IN THE COUNTY JAIL FOR NOT LESS THAN SIXTY DAYS NOR MORE THAN ONE YEAR, AND, IN ADDITION, THE COURT MAY IMPOSE A FINE OF NOT LESS THAN FOUR HUNDRED DOLLARS NOR MORE THAN ONE THOUSAND TWO HUNDRED DOLLARS. THE MINIMUM PERIOD OF IMPRISONMENT PROVIDED FOR SUCH VIOLATION SHALL BE MANDATORY, BUT THE COURT MAY SUSPEND UP TO FIFTY-FOUR DAYS OF THE PERIOD OF IMPRISONMENT IF THE OFFENDER COMPLIES WITH THE PROVISIONS OF SUBPARAGRAPH (I) OF PARAGRAPH (f) OF THIS SUBSECTION (9). IN ADDITION TO ANY OTHER PENALTY THAT IS IMPOSED, EVERY PERSON WHO IS CONVICTED OF A VIOLATION OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION AS DESCRIBED IN THIS SUBPARAGRAPH (II) SHALL PERFORM NOT LESS THAN FIFTY-TWO HOURS NOR MORE

THAN ONE HUNDRED FOUR HOURS OF USEFUL PUBLIC SERVICE. THE PERFORMANCE OF THE MINIMUM PERIOD OF SERVICE SHALL BE MANDATORY, AND THE COURT SHALL HAVE NO DISCRETION TO SUSPEND THE MANDATORY MINIMUM PERIOD OF PERFORMANCE OF SUCH SERVICE.

~~(IV) An offender shall be punished by imprisonment in the county jail for not less than sixty days nor more than one year, and, in addition, the court may impose a fine of not less than four hundred dollars nor more than one thousand two hundred dollars upon conviction of a violation of any of the following:~~ NOTWITHSTANDING ANY OTHER PROVISION OF THIS PARAGRAPH (b), IF A PERSON IS CHARGED WITH A VIOLATION OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION AND THE AMOUNT OF ALCOHOL IN SUCH PERSON'S BLOOD, AS SHOWN BY ANALYSIS OF THE PERSON'S BLOOD OR BREATH, WAS 0.20 OR MORE GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD OR 0.20 OR MORE GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AT THE TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING, AND IF FOR SUCH INCIDENT THE PERSON IS THEN CONVICTED OF THE LESSER OFFENSE OF DRIVING WHILE ABILITY IMPAIRED UNDER PARAGRAPH (b) OF SAID SUBSECTION (1), THE PERSON SHALL BE SUBJECT TO THE PENALTIES SPECIFIED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (9) FOR SUCH CONVICTION.

~~(A) Paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section, which violation occurred at any time after the date of a previous violation for which there has been a conviction of paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section;~~

~~(B) Section 18-3-106 (1) (b) (I), C.R.S.;~~

~~(C) Section 18-3-205 (1) (b) (I), C.R.S.; or~~

~~(D) Paragraph (a) of subsection (1) of this section, driving under the influence, or paragraph (b) of subsection (1) of this section, driving while ability impaired, and the amount of alcohol in such person's blood, as shown by analysis of the person's blood or breath, was 0.20 or more grams of alcohol per one hundred milliliters of blood or 0.20 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving.~~

~~(V) The minimum period of imprisonment as provided for a violation described in subparagraph (IV) of this paragraph (b) shall be mandatory, but the court may suspend up to fifty-four days of the period of imprisonment if the offender complies with the provisions of subparagraph (I) of paragraph (f) of this subsection (9). In addition to any other penalty that is imposed, every person who is convicted of a violation to which subparagraph (IV) of this paragraph (b) and this subparagraph (V) apply shall perform not less than fifty-two hours nor more than one hundred four hours of useful public service. The performance of the minimum period of service shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.~~

~~(VI) Notwithstanding the other provisions of this paragraph (b), if a person is charged with an offense of driving under the influence under paragraph (a) of subsection (1) of this section and the amount of alcohol in such person's blood, as shown by analysis of the person's blood or breath, was 0.20 or more grams of alcohol~~

~~per one hundred milliliters of blood or 0.20 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving, and if for such incident such person is then convicted of the lesser offense of driving while ability impaired under paragraph (b) of subsection (1) of this section, then, because of such aggravating factor, such person is subject to the penalties imposed by paragraph (a) of this subsection (9) for such conviction.~~

(f) (I) The sentence of any person subject to the provisions of subparagraph (II), (III), OR (IV) ~~or (V)~~ of paragraph (a) or subparagraph (II), (III), OR (IV) ~~or (V)~~ of paragraph (b) of this subsection (9) may be suspended to the extent provided for in said subparagraphs if the offender receives a presentence alcohol and drug evaluation; based on that evaluation, satisfactorily completes an appropriate level I or level II alcohol and drug driving safety education or treatment program; and abstains from the use of alcohol for a period of one year from the date of sentencing. Such abstinence shall be monitored by the treatment facility by the administration of disulfiram or by any other means that the director of the treatment facility deems appropriate. If, at any time during the one-year period, the offender does not satisfactorily comply with the conditions of the suspension, ~~that~~ THE sentence shall be reimposed, and the offender shall spend that portion of such offender's sentence ~~which~~ THAT was suspended in the county jail.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: September 25, 2001