

## CHAPTER 322

---

**CRIMINAL LAW AND PROCEDURE**

---

**HOUSE BILL 02-1237**

BY REPRESENTATIVE(S) Hefley, Cloer, Coleman, Groff, Grossman, Lawrence, Romanoff, Alexander, Borodkin, Stafford, and Weddig;  
also SENATOR(S) Gordon, Hanna, and Tupa.

**AN ACT****CONCERNING SUBSTANTIVE CHANGES FOR THE STRENGTHENING OF CRIMINAL LAWS.**

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

**SECTION 1.** 18-3-402 (1) (g), Colorado Revised Statutes, is amended, and the said 18-3-402 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**18-3-402. Sexual assault.** (1) Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if:

(g) The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; OR

(h) THE VICTIM IS PHYSICALLY HELPLESS AND THE ACTOR KNOWS THE VICTIM IS PHYSICALLY HELPLESS AND THE VICTIM HAS NOT CONSENTED.

**SECTION 2.** 18-3-402 (2) and (4) (e), Colorado Revised Statutes, are amended, and the said 18-3-402 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**18-3-402. Sexual assault.** (2) Sexual assault is a class 4 felony, except as provided in subsections ~~(3), (4), and (5)~~ (3), (3.5), (4), AND (5) of this section.

(3.5) SEXUAL ASSAULT IS A CLASS 3 FELONY IF COMMITTED UNDER THE CIRCUMSTANCES DESCRIBED IN PARAGRAPH (h) OF SUBSECTION (1) OF THIS SECTION.

---

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

(4) Sexual assault is a class 3 felony if it is attended by any one or more of the following circumstances:

(e) ~~The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.~~

**SECTION 3.** 18-3-303, Colorado Revised Statutes, is amended to read:

**18-3-303. False imprisonment.** (1) Any person who knowingly confines or detains another without the other's consent and without proper legal authority commits false imprisonment. ~~which is a class 2 misdemeanor.~~ This section shall not apply to a peace officer acting in good faith within the scope of his OR HER duties.

(2) FALSE IMPRISONMENT IS A CLASS 2 MISDEMEANOR; EXCEPT THAT FALSE IMPRISONMENT IS A CLASS 5 FELONY IF:

(a) THE PERSON USES FORCE OR THREAT OF FORCE TO CONFINE OR DETAIN THE OTHER PERSON; AND

(b) THE PERSON CONFINES OR DETAINS THE OTHER PERSON FOR TWELVE HOURS OR LONGER.

**SECTION 4.** 18-18-405 (2) (a) (II), (2) (b) (II), (2) (c) (II), (2) (d) (II), and (2.5) (a), Colorado Revised Statutes, are amended to read:

**18-18-405. Unlawful distribution, manufacturing, dispensing, sale, or possession.** (2) Except as is otherwise provided for offenses concerning marihuana and marihuana concentrate in section 18-18-406 and offenses involving minors in section 18-18-407 (1) (g), any person who violates any of the provisions of subsection (1) of this section:

(a) In the case of a controlled substance listed in schedule I or II of part 2 of this article, commits:

(II) A class 2 felony, if the violation is committed subsequent to a prior conviction ~~for~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF a violation to which this paragraph (a) applies OR WOULD APPLY IF CONVICTED IN THIS STATE;

(b) In the case of a controlled substance listed in schedule III of part 2 of this article, commits:

(II) A class 3 felony, if the violation is committed subsequent to any prior conviction ~~under~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF A VIOLATION TO WHICH paragraph (a) of this subsection (2) or this paragraph (b) APPLIES OR WOULD APPLY IF CONVICTED IN THIS STATE;

(c) In the case of a controlled substance listed in schedule IV of part 2 of this article, commits:

(II) A class 4 felony, if the violation is committed subsequent to a prior conviction ~~for~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF a violation to which paragraph (a) or (b) of this subsection (2) or this paragraph (c) applies OR WOULD APPLY IF CONVICTED IN THIS STATE;

(d) In the case of a controlled substance listed in schedule V of part 2 of this article, commits:

(II) A class 5 felony, if the violation is committed subsequent to any prior conviction ~~under~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF A VIOLATION TO WHICH paragraph (a), (b), or (c) of this subsection (2) or this paragraph (d) APPLIES OR WOULD APPLY IF CONVICTED IN THIS STATE.

(2.5) (a) Notwithstanding the provisions of paragraph (c) of subsection (2) of this section, a person who violates the provisions of subsection (1) of this section with regard to flunitrazepam commits a class 3 felony; except that the person commits a class 2 felony if the violation is committed subsequent to a prior conviction ~~for~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF a violation involving flunitrazepam or to which paragraph (a) of subsection (2) of this section applies OR WOULD APPLY IF CONVICTED IN THIS STATE.

**SECTION 5.** 18-18-406 (4) (a) (II), (4) (b) (II), (7) (c), (8) (a) (II) (B), and (8) (b) (III) (B), Colorado Revised Statutes, are amended to read:

**18-18-406. Offenses relating to marihuana and marihuana concentrate.**

(4) (a) Any person who possesses more than one ounce of marihuana but less than eight ounces of marihuana commits:

(II) A class 5 felony, if the violation is committed subsequent to a prior conviction ~~for~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF a violation to which this subsection (4) applies OR WOULD APPLY IF CONVICTED IN THIS STATE.

(b) Any person who possesses eight ounces or more of marihuana or any amount of marihuana concentrate commits:

(II) A class 4 felony, if the violation is committed subsequent to a prior conviction ~~for~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF a violation to which this subsection (4) applies OR WOULD APPLY IF CONVICTED IN THIS STATE.

(7) (c) Any person commits a class 3 felony, if the violation is committed subsequent to a prior conviction ~~for~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF a violation to which this subsection (7) applies OR WOULD APPLY IF CONVICTED IN THIS STATE, and, in addition to the punishment provided in section 18-1-105, shall be punished by a fine of not more than ten thousand dollars, and the court shall have no jurisdiction to suspend the sentence of imprisonment or to grant probation to such

person. For offenses committed on or after July 1, 1985, the fine shall be in an amount within the presumptive range set out in section 18-1-105 (1) (a) (III).

(8) (a) (II) Any person who violates the provisions of subparagraph (I) of this paragraph (a) commits:

(B) A class 3 felony, if the violation is committed subsequent to a prior conviction ~~for any violation of~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF A VIOLATION TO WHICH THIS SUBSECTION (8) APPLIES OR WOULD APPLY IF CONVICTED IN THIS STATE.

(b) (III) Any person who violates any of the provisions of subparagraph (I) of this paragraph (b) commits:

(B) A class 3 felony, if the violation is committed subsequent to any prior conviction ~~for~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF A VIOLATION TO WHICH THIS SUBSECTION (8) APPLIES OR WOULD APPLY IF CONVICTED IN THIS STATE.

**SECTION 6.** 18-18-407 (2) (a), Colorado Revised Statutes, is amended to read:

**18-18-407. Special offender.** (2) (a) A defendant shall be a special offender if the defendant is convicted of selling, distributing, ~~or~~ possessing with intent to distribute, MANUFACTURING, OR ATTEMPTING TO MANUFACTURE any controlled substance in violation of section 18-18-405 ~~to any person~~ either within or upon the grounds of any public or private elementary, middle, junior high, or high school, vocational school, or public housing development, or within one thousand feet of the perimeter of any such school or public housing development grounds on any street, alley, parkway, sidewalk, public park, playground, or other area or premises that is accessible to the public, or within any private dwelling that is accessible to the public for the purpose of the sale, distribution, use, ~~or~~ exchange, MANUFACTURE, OR ATTEMPTED MANUFACTURE of controlled substances in violation of this article, or in any school bus as defined in section 42-1-102 (88), C.R.S., while such school bus is engaged in the transportation of persons who are students at any public or private elementary, middle, junior high, or high school. The court is required in addition to imposing the sentence to imprisonment required by subsection (1) of this section, to fine the defendant without suspension at least twice the minimum fine provided for in section 18-1-105 (1) (a) (III) if the defendant's offense is a felony or in section 18-1-106 (1) if the defendant's offense is a misdemeanor.

**SECTION 7.** 18-4-501 (1), Colorado Revised Statutes, is amended to read:

**18-4-501. Criminal mischief.** (1) Any person who knowingly damages the real or personal property of one or more other persons, INCLUDING PROPERTY OWNED BY THE PERSON JOINTLY WITH ANOTHER PERSON OR PROPERTY OWNED BY THE PERSON IN WHICH ANOTHER PERSON HAS A POSSESSORY OR PROPRIETARY INTEREST, in the course of a single criminal episode commits a class 3 misdemeanor where the aggregate damage to the real or personal property is less than one hundred dollars. Where the aggregate damage to the real or personal property is one hundred dollars or more but less than five hundred dollars, such person commits a class 2 misdemeanor. Where the aggregate damage to the real or personal property is five

hundred dollars or more but less than fifteen thousand dollars, such person commits a class 4 felony. Where the aggregate damage to the real or personal property is fifteen thousand dollars or more, such person commits a class 3 felony.

**SECTION 8.** 18-3-405 (2) (d), Colorado Revised Statutes, is amended to read:

**18-3-405. Sexual assault on a child.** (2) Sexual assault on a child is a class 4 felony, but it is a class 3 felony if:

(d) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time must be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse must have been committed within ten years prior to OR AT ANY TIME AFTER the offense charged in the information or indictment. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5).

**SECTION 9.** 18-3-405.3 (2) (b), Colorado Revised Statutes, is amended to read:

**18-3-405.3. Sexual assault on a child by one in a position of trust.** (2) Sexual assault on a child by one in a position of trust is a class 3 felony if:

(b) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time need be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse must have been committed within ten years prior to OR AT ANY TIME AFTER the offense charged in the information or indictment. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5).

**SECTION 10.** 12-56-104 (4) and (5), Colorado Revised Statutes, are amended to read:

**12-56-104. Prohibited acts - penalties.** (4) Except as otherwise provided in this section, any pawnbroker who violates any of the provisions of this article commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S., and upon a second or subsequent conviction ~~for~~ OF a violation of this article within three years ~~of~~ AFTER the date of a prior conviction, a pawnbroker commits a ~~class-5~~ CLASS 6 felony and shall be punished as provided in section 18-1-105, C.R.S.

(5) Any customer who knowingly gives false information with respect to the information required by section 12-56-103 (1) commits a ~~class-5~~ CLASS 6 felony and shall be punished as provided in section 18-1-105, C.R.S.

**SECTION 11.** 18-4-503 (1), Colorado Revised Statutes, is amended to read:

**18-4-503. Second degree criminal trespass.** (1) A person commits the crime of second degree criminal trespass if such person:

(a) Unlawfully enters or remains in or upon THE premises of another which are enclosed in a manner designed to exclude intruders or are fenced; or

(b) ~~if such person~~ Knowingly and unlawfully enters or remains in or upon the common areas of a hotel, motel, condominium, or apartment building; OR

(c) KNOWINGLY AND UNLAWFULLY ENTERS OR REMAINS IN A MOTOR VEHICLE OF ANOTHER.

**SECTION 12.** 18-18-404 (4), Colorado Revised Statutes, is amended to read:

**18-18-404. Unlawful use of a controlled substance.** (4) In addition to any other penalty imposed by this section, upon each conviction, entry of plea of guilty or nolo contendere, or receipt of a deferred sentence for a nonfelony violation of this section or adjudication as a delinquent for an act that would constitute a nonfelony violation of this section if committed by an adult, any driver's permit or minor driver's license held by the offender shall be ~~revoked~~ SUSPENDED as provided in section ~~42-2-125~~ 42-2-127.3, C.R.S.

**SECTION 13.** 18-18-405 (6), Colorado Revised Statutes, is amended to read:

**18-18-405. Unlawful distribution, manufacturing, dispensing, sale, or possession.** (6) In addition to any other penalty imposed by this section, upon each conviction, entry of plea of guilty or nolo contendere, or receipt of a deferred sentence for a nonfelony violation of this section or adjudication as a delinquent for an act that would constitute a nonfelony violation of this section if committed by an adult, any driver's permit or minor driver's license held by the offender shall be ~~revoked~~ SUSPENDED as provided in section ~~42-2-125~~ 42-2-127.3, C.R.S.

**SECTION 14.** 18-18-406 (12), Colorado Revised Statutes, is amended to read:

**18-18-406. Offenses relating to marihuana and marihuana concentrate.** (12) In addition to any other penalty imposed by this section, upon each conviction, entry of plea of guilty or nolo contendere, or receipt of a deferred sentence for a nonfelony violation of this section or adjudication as a delinquent for an act that would constitute a nonfelony violation of this section if committed by an adult, any driver's permit or minor driver's license held by the offender shall be ~~revoked~~ SUSPENDED as provided in section ~~42-2-125~~ 42-2-127.3, C.R.S.

**SECTION 15.** Part 1 of article 2 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**42-2-127.3. Authority to suspend license - controlled substance violations.** (1) (a) WHENEVER THE DEPARTMENT RECEIVES NOTICE THAT A PERSON HAS BEEN CONVICTED OF ANY FELONY OFFENSE PROVIDED FOR IN SECTION 18-18-404, 18-18-405, OR 18-18-406, C.R.S., OR ANY ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT ANY OF SAID OFFENSES, THE DEPARTMENT SHALL IMMEDIATELY SUSPEND THE LICENSE OF THE PERSON FOR A PERIOD OF NOT LESS THAN ONE YEAR, UNLESS THE PROVISIONS OF SECTION 42-2-132 (2) (b) ALLOW FOR A SHORTER PERIOD OF SUSPENSION.

(b) WHENEVER THE DEPARTMENT RECEIVES NOTICE THAT A MINOR DRIVER HAS BEEN CONVICTED OF OR ADJUDICATED A DELINQUENT UNDER TITLE 19, C.R.S., FOR ANY OFFENSE PROVIDED FOR IN SECTION 18-18-404 (1) (b), 18-18-405 (2) (d) (I), OR 18-18-406 (1), (3) (a) (I), OR (4) (a) (I), C.R.S., OR ANY COMPARABLE MUNICIPAL CHARTER OR ORDINANCE OFFENSE, THE DEPARTMENT SHALL IMMEDIATELY SUSPEND THE LICENSE OF THE PERSON FOR A PERIOD OF NOT LESS THAN ONE YEAR, UNLESS THE PROVISIONS OF SECTION 42-2-132 (2) (b) ALLOW FOR A SHORTER PERIOD OF SUSPENSION.

(c) FOR PURPOSES OF THIS SUBSECTION (1), A PERSON HAS BEEN CONVICTED WHEN SUCH PERSON HAS BEEN FOUND GUILTY BY A COURT OR A JURY, ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE, OR RECEIVED A DEFERRED SENTENCE FOR AN OFFENSE.

(2) (a) UPON SUSPENDING THE LICENSE OF ANY PERSON AS REQUIRED BY THIS SECTION, THE DEPARTMENT SHALL IMMEDIATELY NOTIFY THE LICENSEE AS PROVIDED IN SECTION 42-2-119 (2).

(b) UPON RECEIPT OF THE NOTICE OF SUSPENSION, THE LICENSEE OR THE LICENSEE'S ATTORNEY MAY REQUEST A HEARING IN WRITING. THE DEPARTMENT, UPON NOTICE TO THE LICENSEE AS PROVIDED IN SECTION 42-2-119 (2), SHALL HOLD A HEARING NOT LESS THAN THIRTY DAYS AFTER RECEIVING SUCH REQUEST THROUGH A HEARING COMMISSIONER APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, WHICH HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-105, C.R.S. THE HEARING SHALL BE HELD AT THE DISTRICT OFFICE OF THE DEPARTMENT CLOSEST TO THE RESIDENCE OF THE LICENSEE; EXCEPT THAT ALL OR PART OF THE HEARING MAY, AT THE DISCRETION OF THE DEPARTMENT, BE CONDUCTED IN REAL TIME, BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION 42-1-218.5. AFTER SUCH HEARING, THE LICENSEE MAY APPEAL THE DECISION OF THE DEPARTMENT TO THE DISTRICT COURT AS PROVIDED IN SECTION 42-2-135. SHOULD A DRIVER WHO HAS HAD A LICENSE SUSPENDED UNDER THIS SECTION BE SUBSEQUENTLY ACQUITTED OF THE CONVICTION WHICH REQUIRED THE SUSPENSION BY A COURT OF RECORD, THE DEPARTMENT SHALL IMMEDIATELY, IN ANY EVENT NOT LATER THAN TEN DAYS AFTER THE RECEIPT OF SUCH NOTICE OF ACQUITTAL, REINSTATE SAID LICENSE TO THE DRIVER AFFECTED, UNLESS THE LICENSE IS UNDER OTHER RESTRAINT.

(3) (a) IF THERE IS NO OTHER STATUTORY REASON FOR DENIAL OF A PROBATIONARY LICENSE, ANY INDIVIDUAL WHO HAS HAD A LICENSE SUSPENDED BY THE DEPARTMENT BECAUSE OF, AT LEAST IN PART, A CONVICTION OF AN OFFENSE SPECIFIED IN SUBSECTION (1) OF THIS SECTION MAY BE ENTITLED TO A PROBATIONARY LICENSE FOR THE PURPOSE OF DRIVING FOR REASONS OF EMPLOYMENT, EDUCATION, HEALTH, COMPLIANCE WITH THE REQUIREMENTS OF PROBATION OR SUSPENDED SENTENCE, OR ALCOHOL AND DRUG EDUCATION OR TREATMENT. SUCH A PROBATIONARY LICENSE SHALL:

(I) CONTAIN ANY OTHER RESTRICTIONS AS THE DEPARTMENT DEEMS REASONABLE AND NECESSARY;

(II) BE SUBJECT TO CANCELLATION FOR VIOLATION OF ANY SUCH RESTRICTIONS, INCLUDING ABSENCES FROM ALCOHOL AND DRUG EDUCATION OR TREATMENT SESSIONS OR FAILURE TO COMPLETE ALCOHOL AND DRUG EDUCATION OR TREATMENT

PROGRAMS; AND

(III) BE ISSUED FOR THE ENTIRE PERIOD OF SUSPENSION.

(b) THE DEPARTMENT MAY REFUSE TO ISSUE A PROBATIONARY LICENSE IF THE DEPARTMENT FINDS THAT THE DRIVING RECORD OF THE INDIVIDUAL IS SUCH THAT THE INDIVIDUAL HAS SUFFICIENT POINTS TO REQUIRE THE SUSPENSION OR REVOCATION OF A LICENSE TO DRIVE ON THE HIGHWAYS OF THIS STATE PURSUANT TO SECTION 42-2-127, OR IF THE DEPARTMENT FINDS FROM THE RECORD AFTER A HEARING CONDUCTED IN ACCORDANCE WITH PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION THAT AGGRAVATING CIRCUMSTANCES EXIST TO INDICATE THE INDIVIDUAL IS UNSAFE FOR DRIVING FOR ANY PURPOSE. IN REFUSING TO ISSUE A PROBATIONARY LICENSE, THE DEPARTMENT SHALL MAKE SPECIFIC FINDINGS OF FACT TO SUPPORT SUCH REFUSAL.

**SECTION 16. Repeal.** 42-2-125 (1) (k), Colorado Revised Statutes, is repealed as follows:

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

(k) ~~Been convicted of any felony offense provided for in section 18-18-404, 18-18-405, or 18-18-406, C.R.S., or any attempt, conspiracy, or solicitation to commit any said offense. For purposes of this paragraph (k), a person has been convicted when such person has been found guilty by a court or a jury, entered a plea of guilty or nolo contendere, or received a deferred sentence for an offense.~~

~~(H) In the case of a minor driver, been convicted of or adjudicated for any offense provided for in section 18-18-404 (1) (b), 18-18-405 (2) (d) (I), or 18-18-406 (1), (3) (a) (I), or (4) (a) (I), C.R.S., or any comparable municipal charter or ordinance offense.~~

**SECTION 17.** 42-2-124 (1) (a) and (4), Colorado Revised Statutes, are amended to read:

**42-2-124. When court to report convictions.** (1) (a) Except as otherwise provided, whenever any person is convicted of any offense for which this article makes mandatory the revocation OR SUSPENSION of the driver's or minor driver's license of such person by the department, the court in which such conviction is had shall require the offender to immediately surrender such driver's or minor driver's license or any instruction permit to the court at the time of conviction, and the court shall, not later than ten days after such conviction, forward the license to the department, together with a record of such conviction on the form prescribed by the department. Any person who does not immediately surrender such person's license or permit to the court commits a class 2 misdemeanor traffic offense, unless such person swears or affirms under oath administered by the court and subject to the penalties of perjury that the license or permit has been lost, destroyed, or is not in said person's immediate possession. Any person who swears or affirms that the license or permit is not in the immediate possession of said person shall surrender said license or permit to the court within five days of the sworn or affirmed statement, and

if not surrendered within such time, said person commits a class 2 misdemeanor traffic offense.

(4) For the purposes of section 42-2-125 ~~(1) (k) (H)~~; (1) (m) and (1) (n) AND SECTION 42-2-127.3, an adjudication of delinquency under title 19, C.R.S., for the acts described in such paragraphs ~~(k) (H), (m) and (n)~~ SECTIONS shall be considered to be a conviction for purposes of this section. However, an expungement of an adjudication of delinquency shall not result in a rescission of the revocation OR SUSPENSION of the driving privilege unless said expungement is a result of a reversal of the adjudication on appeal.

**SECTION 18.** 42-2-130, Colorado Revised Statutes, is amended to read:

**42-2-130. Mandatory surrender of license or permit for drug convictions.**

Immediately upon a plea of guilty or nolo contendere or a verdict of guilty by the court or a jury to or adjudication for an offense for which ~~revocation~~ SUSPENSION of a license or permit is mandatory pursuant to section ~~42-2-125 (1) (k)~~ 42-2-127.3, the court shall require the offender to immediately surrender the offender's driver's, minor driver's, or temporary driver's license or instruction permit to the court. The court shall forward to the department a notice of plea or verdict on the form prescribed by the department, together with the offender's license or permit, not later than ten days after the surrender of the license or permit. Any person who does not immediately surrender such person's license or permit to the court commits a class 2 misdemeanor traffic offense, unless such person swears or affirms under oath administered by the court and subject to the penalties of perjury that the license or permit has been lost, destroyed, or is not in said person's immediate possession. Any person who swears or affirms that the license or permit is not in the immediate possession of said person shall surrender said license or permit to the court within five days of the sworn or affirmed statement, and, if not surrendered within such time, said person commits a class 2 misdemeanor traffic offense.

**SECTION 19.** 42-2-132 (2) (b), Colorado Revised Statutes, is amended to read:

**42-2-132. Period of suspension or revocation.** (2) (b) Any person whose license or privilege to drive a motor vehicle on the public highways is ~~revoked~~ SUSPENDED pursuant to section ~~42-2-125 (1) (k)~~ 42-2-127.3 for conviction of a drug offense shall have such person's driver's license ~~revoked~~ SUSPENDED for a period of one year for each such conviction; except that the period of ~~revocation~~ SUSPENSION shall be three months if such person has not previously been convicted of a drug offense which is grounds for driver's license or privilege ~~revocation~~ SUSPENSION pursuant to section ~~42-2-125 (1) (k)~~ 42-2-127.3. Any ~~revocation~~ SUSPENSION of a person's driver's license for conviction of a drug offense pursuant to section ~~42-2-125 (1) (k)~~ 42-2-127.3 shall begin upon conviction. Each subsequent conviction for such a drug offense occurring while a person's driver's license is already ~~revoked~~ OR SUSPENDED for such a drug offense shall extend the period of ~~revocation~~ OR SUSPENSION for an additional year.

**SECTION 20.** 42-7-406 (1), Colorado Revised Statutes, is amended to read:

**42-7-406. Proof required under certain conditions.** (1) Whenever the director revokes the license of any person under section 42-2-125 or 42-2-126, or cancels any

license under section 42-2-122 because of the licensee's inability to operate a motor vehicle because of physical or mental incompetence, or cancels any probationary license under section 42-2-127, the director shall not issue to or continue in effect for any such person any new or renewal of license until permitted under the motor vehicle laws of this state, and not then until and unless such person files or has filed and maintains proof of financial responsibility as provided in this article; except that persons whose licenses are canceled pursuant to section 42-2-122 (2.5), revoked pursuant to section 42-2-125 ~~(1) (k) (H)~~; (1) (m) or (1) (n), revoked for a first offense under section 42-2-125 (1) (g.5) or a first offense under section 42-2-126 (2) (a) (I.5) or (2) (a) (IV), SUSPENDED PURSUANT TO SECTION 42-2-127.3, or denied pursuant to section 42-2-104 (3) (f) based upon a conviction under section 18-4-509 (2), C.R.S., or a conviction under section 18-4-501, C.R.S., where the underlying factual basis involved defacing property, or any counterpart municipal charter or ordinance offense to either of said sections, shall not be required to file proof of financial responsibility in order to be relicensed.

**SECTION 21.** 18-7-302 (2) (b), (3), and (4), Colorado Revised Statutes, are amended to read:

**18-7-302. Indecent exposure.** (2) (b) Indecent exposure to a child under the age of fifteen years is a ~~class 2~~ CLASS 1 misdemeanor.

~~(3) A second offense of the offense described in paragraph (b) of subsection (2) of this section following the conviction for any such offense is a class 1 misdemeanor.~~

(4) Any THIRD OR subsequent offense of the offense described in paragraph (b) of subsection (2) of this section following a ~~second~~ conviction for any such offense is a class 6 felony.

**SECTION 22.** 18-9-202 (2) (a) and (2) (b), Colorado Revised Statutes, are amended to read:

**18-9-202. Cruelty to animals - neglect of animals - offenses - repeal.** (2) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), cruelty to animals is a class 1 misdemeanor.

~~(b) (I) In the case of any person incurring a second or subsequent conviction under the provisions of paragraph (a) of this subsection (2) a sentence of imprisonment within the minimum and maximum terms for a class 1 misdemeanor as provided in section 18-1-106 shall be mandatory and shall not be subject to suspension, nor shall such person be eligible for probation or parole for any part of such period~~ IS A CLASS 6 FELONY. A plea of nolo contendere accepted by the court shall be considered a conviction for the purposes of this section.

(II) IN ANY CASE WHERE THE COURT SENTENCES A PERSON CONVICTED OF A CLASS 6 FELONY UNDER THE PROVISIONS OF THIS PARAGRAPH (b) TO PROBATION, THE COURT SHALL, IN ADDITION TO ANY OTHER CONDITION OF PROBATION IMPOSED, ORDER THAT:

(A) THE OFFENDER, PURSUANT TO SECTION 16-11-202 (1), C.R.S., BE COMMITTED TO THE COUNTY JAIL FOR NINETY DAYS; OR

(B) THE OFFENDER, PURSUANT TO SECTION 17-27.8-102 (3), C.R.S., BE SUBJECT TO HOME DETENTION FOR NO FEWER THAN NINETY DAYS.

(III) IN ANY CASE WHERE AN OFFENDER IS COMMITTED TO THE COUNTY JAIL OR PLACED IN HOME DETENTION PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), THE COURT SHALL ENTER JUDGMENT AGAINST THE OFFENDER FOR ALL COSTS ASSESSED PURSUANT TO SECTION 16-11-501, C.R.S., INCLUDING, BUT NOT LIMITED TO, THE COST OF CARE.

**SECTION 23. Repeal.** 18-9-303 (1) (e), Colorado Revised Statutes, is repealed as follows:

**18-9-303. Wiretapping prohibited - penalty.** (1) Any person not a sender or intended receiver of a telephone or telegraph communication commits wiretapping if he:

(e) ~~Knowingly prevents, obstructs, or delays, by any means whatsoever, the sending, transmission, conveyance, or delivery in this state of any message, communication, or report by or through any telegraph or telephone line, wire, cable, or other facility or any electronic, mechanical, or other device; or~~

**SECTION 24.** Part 3 of article 9 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**18-9-306.5. Obstruction of telephone or telegraph service.** (1) A PERSON COMMITS OBSTRUCTION OF TELEPHONE OR TELEGRAPH SERVICE IF THE PERSON KNOWINGLY PREVENTS, OBSTRUCTS, OR DELAYS, BY ANY MEANS WHATSOEVER, THE SENDING, TRANSMISSION, CONVEYANCE, OR DELIVERY IN THIS STATE OF ANY MESSAGE, COMMUNICATION, OR REPORT BY OR THROUGH ANY TELEGRAPH OR TELEPHONE LINE, WIRE, CABLE, OR OTHER FACILITY OR ANY CORDLESS, WIRELESS, ELECTRONIC, MECHANICAL, OR OTHER DEVICE.

(2) OBSTRUCTION OF TELEPHONE OR TELEGRAPH SERVICE IS A CLASS 1 MISDEMEANOR.

**SECTION 25.** 18-9-202 (2) (a.5) (I) (A) and (2) (a.5) (II), Colorado Revised Statutes, are amended, and the said 18-9-202 (2) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

**18-9-202. Cruelty to animals - aggravated cruelty to animals - neglect of animals - offenses - repeal.** (2) (a.5) (I) (A) In addition to the sentence imposed pursuant to this subsection (2), any person convicted of committing cruelty to animals pursuant to subsection (1) of this section OR AGGRAVATED CRUELTY TO ANIMALS PURSUANT TO SUBSECTION (1.5) OF THIS SECTION, the underlying factual basis of which has been found by the court to include the knowing or intentional torture or torment of an animal that needlessly injures, mutilates, or kills an animal shall pay a surcharge of up to four hundred dollars to the clerk of the court in the county in which the conviction occurs or in which a deferred sentence is entered. Each clerk shall transmit the moneys to the court administrator of the judicial district in which the offense occurred for credit to the fund.

(II) In addition to the sentence imposed pursuant to subparagraph (I) of this paragraph (a.5) any person convicted of committing cruelty to animals pursuant to subsection (1) of this section OR AGGRAVATED CRUELTY TO ANIMALS PURSUANT TO SUBSECTION (1.5) OF THIS SECTION, the underlying factual basis of which has been found by the court to include the knowing or intentional torture or torment of an animal that needlessly injures, mutilates, or kills an animal, may be ordered to complete an anger management treatment program or any other appropriate treatment program.

(c) AGGRAVATED CRUELTY TO ANIMALS IS A CLASS 6 FELONY; EXCEPT THAT A SECOND OR SUBSEQUENT CONVICTION FOR THE OFFENSE OF AGGRAVATED CRUELTY TO ANIMALS IS A CLASS 5 FELONY. A PLEA OF NOLO CONTENDERE ACCEPTED BY THE COURT SHALL BE CONSIDERED A CONVICTION FOR PURPOSES OF THIS SECTION.

**SECTION 26.** 18-9-202, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**18-9-202. Cruelty to animals - aggravated cruelty to animals - neglect of animals - offenses - repeal.** (1.5) A PERSON COMMITS AGGRAVATED CRUELTY TO ANIMALS IF HE OR SHE KNOWINGLY TORTURES, TORTURES, OR KILLS AN ANIMAL.

**SECTION 27.** 18-18-405 (2.1) (a) (I) (B), (2.1) (a) (II) (B), (2.1) (a) (III) (B), (2.1) (a) (IV) (B), (2.3) (a) (II), and (2.6) (a), Colorado Revised Statutes, as enacted in Senate Bill 02-039, enacted at the Second Regular Session of the Sixty-third General Assembly, are amended to read:

**18-18-405. Unlawful distribution, manufacturing, dispensing, sale, or possession - repeal.** (2.1) (a) Except as is otherwise provided for offenses concerning marihuana and marihuana concentrate in section 18-18-406 and offenses involving minors in section 18-18-407 (1) (g), any person who violates any of the provisions of subsection (1) of this section:

(I) In the case of a controlled substance listed in schedule I or II of part 2 of this article, commits:

(B) A class 2 felony, if the violation is committed subsequent to a prior conviction ~~for~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF a violation to which this subparagraph (I) applies OR WOULD APPLY IF CONVICTED IN THIS STATE;

(II) In the case of a controlled substance listed in schedule III of part 2 of this article, commits:

(B) A class 3 felony, if the violation is committed subsequent to any prior conviction ~~under~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF A VIOLATION TO WHICH subparagraph (I) of this paragraph (a) or this subparagraph (II) APPLIES OR WOULD APPLY IF CONVICTED IN THIS STATE;

(III) In the case of a controlled substance listed in schedule IV of part 2 of this article, commits:

(B) A class 4 felony, if the violation is committed subsequent to a prior conviction ~~for~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF a violation to which subparagraph (I) or (II) of this paragraph (a) or this subparagraph (III) applies OR WOULD APPLY IF CONVICTED IN THIS STATE;

(IV) In the case of a controlled substance listed in schedule V of part 2 of this article, commits:

(B) A class 5 felony, if the violation is committed subsequent to any prior conviction ~~under~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF A VIOLATION TO WHICH subparagraph (I), (II), or (III) of this paragraph (a) or this subparagraph (IV) APPLIES OR WOULD APPLY IF CONVICTED IN THIS STATE.

(2.3) (a) Any person who violates the provisions of subsection (1) of this section by possession of any material, compound, mixture, or preparation weighing one gram or less that contains any quantity of a controlled substance listed in schedules I through IV of part 2 of this article commits:

(II) A class 4 felony, if the violation is committed subsequent to any prior conviction ~~under~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF A VIOLATION TO WHICH subparagraph (I), (II), or (III) of paragraph (a) of subsection (2) of this section or this subsection (2.3) APPLIES OR WOULD APPLY IF CONVICTED IN THIS STATE.

(2.6) (a) Notwithstanding the provisions of subparagraph (III) of paragraph (a) of subsection (2.1) of this section, a person who violates the provisions of subsection (1) of this section with regard to flunitrazepam commits a class 3 felony; except that the person commits a class 2 felony if the violation is committed subsequent to a prior conviction ~~for~~ IN THIS OR ANY OTHER STATE, THE UNITED STATES, OR ANY TERRITORY SUBJECT TO THE JURISDICTION OF THE UNITED STATES OF a violation involving flunitrazepam or to which subparagraph (I) of paragraph (a) of subsection (2.1) of this section applies OR WOULD APPLY IF CONVICTED IN THIS STATE.

**SECTION 28.** Part 1 of article 2 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**42-2-127.3. Authority to suspend license - controlled substance violations.**

(1) (a) WHENEVER THE DEPARTMENT RECEIVES NOTICE THAT A PERSON HAS BEEN CONVICTED OF ANY FELONY OFFENSE PROVIDED FOR IN SECTION 18-18-404, 18-18-405, OR 18-18-406, C.R.S., OR ANY ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT ANY OF SAID OFFENSES, THE DEPARTMENT SHALL IMMEDIATELY SUSPEND THE LICENSE OF THE PERSON FOR A PERIOD OF NOT LESS THAN ONE YEAR, UNLESS THE PROVISIONS OF SECTION 42-2-132 (2) (b) ALLOW FOR A SHORTER PERIOD OF SUSPENSION.

(b) WHENEVER THE DEPARTMENT RECEIVES NOTICE THAT A MINOR DRIVER HAS BEEN CONVICTED OF OR ADJUDICATED A DELINQUENT UNDER TITLE 19, C.R.S., FOR ANY OFFENSE PROVIDED FOR IN SECTION 18-18-404 (1) (a) (II) OR (1.1) (a) (II), 18-18-405 (2) (a) (IV) (A) OR (2.1) (a) (IV) (A), OR 18-18-406 (1), (3) (a) (I), OR (4)

(a) (I), C.R.S., OR ANY COMPARABLE MUNICIPAL CHARTER OR ORDINANCE OFFENSE, THE DEPARTMENT SHALL IMMEDIATELY SUSPEND THE LICENSE OF THE PERSON FOR A PERIOD OF NOT LESS THAN ONE YEAR, UNLESS THE PROVISIONS OF SECTION 42-2-132 (2) (b) ALLOW FOR A SHORTER PERIOD OF SUSPENSION.

(c) FOR PURPOSES OF THIS SUBSECTION (1), A PERSON HAS BEEN CONVICTED WHEN SUCH PERSON HAS BEEN FOUND GUILTY BY A COURT OR A JURY, ENTERED A PLEA OF GUILTY OR NOLO CONTENDERE, OR RECEIVED A DEFERRED SENTENCE FOR AN OFFENSE.

(2) (a) UPON SUSPENDING THE LICENSE OF ANY PERSON AS REQUIRED BY THIS SECTION, THE DEPARTMENT SHALL IMMEDIATELY NOTIFY THE LICENSEE AS PROVIDED IN SECTION 42-2-119 (2).

(b) UPON RECEIPT OF THE NOTICE OF SUSPENSION, THE LICENSEE OR THE LICENSEE'S ATTORNEY MAY REQUEST A HEARING IN WRITING. THE DEPARTMENT, UPON NOTICE TO THE LICENSEE AS PROVIDED IN SECTION 42-2-119 (2), SHALL HOLD A HEARING NOT LESS THAN THIRTY DAYS AFTER RECEIVING SUCH REQUEST THROUGH A HEARING COMMISSIONER APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, WHICH HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 24-4-105, C.R.S. THE HEARING SHALL BE HELD AT THE DISTRICT OFFICE OF THE DEPARTMENT CLOSEST TO THE RESIDENCE OF THE LICENSEE; EXCEPT THAT ALL OR PART OF THE HEARING MAY, AT THE DISCRETION OF THE DEPARTMENT, BE CONDUCTED IN REAL TIME, BY TELEPHONE OR OTHER ELECTRONIC MEANS IN ACCORDANCE WITH SECTION 42-1-218.5. AFTER SUCH HEARING, THE LICENSEE MAY APPEAL THE DECISION OF THE DEPARTMENT TO THE DISTRICT COURT AS PROVIDED IN SECTION 42-2-135. SHOULD A DRIVER WHO HAS HAD A LICENSE SUSPENDED UNDER THIS SECTION BE SUBSEQUENTLY ACQUITTED OF THE CONVICTION WHICH REQUIRED THE SUSPENSION BY A COURT OF RECORD, THE DEPARTMENT SHALL IMMEDIATELY, IN ANY EVENT NOT LATER THAN TEN DAYS AFTER THE RECEIPT OF SUCH NOTICE OF ACQUITTAL, REINSTATE SAID LICENSE TO THE DRIVER AFFECTED, UNLESS THE LICENSE IS UNDER OTHER RESTRAINT.

(3) (a) IF THERE IS NO OTHER STATUTORY REASON FOR DENIAL OF A PROBATIONARY LICENSE, ANY INDIVIDUAL WHO HAS HAD A LICENSE SUSPENDED BY THE DEPARTMENT BECAUSE OF, AT LEAST IN PART, A CONVICTION OF AN OFFENSE SPECIFIED IN SUBSECTION (1) OF THIS SECTION MAY BE ENTITLED TO A PROBATIONARY LICENSE FOR THE PURPOSE OF DRIVING FOR REASONS OF EMPLOYMENT, EDUCATION, HEALTH, COMPLIANCE WITH THE REQUIREMENTS OF PROBATION OR SUSPENDED SENTENCE, OR ALCOHOL AND DRUG EDUCATION OR TREATMENT. SUCH A PROBATIONARY LICENSE SHALL:

(I) CONTAIN ANY OTHER RESTRICTIONS AS THE DEPARTMENT DEEMS REASONABLE AND NECESSARY;

(II) BE SUBJECT TO CANCELLATION FOR VIOLATION OF ANY SUCH RESTRICTIONS, INCLUDING ABSENCES FROM ALCOHOL AND DRUG EDUCATION OR TREATMENT SESSIONS OR FAILURE TO COMPLETE ALCOHOL AND DRUG EDUCATION OR TREATMENT PROGRAMS; AND

(III) BE ISSUED FOR THE ENTIRE PERIOD OF SUSPENSION.

(b) THE DEPARTMENT MAY REFUSE TO ISSUE A PROBATIONARY LICENSE IF THE DEPARTMENT FINDS THAT THE DRIVING RECORD OF THE INDIVIDUAL IS SUCH THAT THE INDIVIDUAL HAS SUFFICIENT POINTS TO REQUIRE THE SUSPENSION OR REVOCATION OF A LICENSE TO DRIVE ON THE HIGHWAYS OF THIS STATE PURSUANT TO SECTION 42-2-127, OR IF THE DEPARTMENT FINDS FROM THE RECORD AFTER A HEARING CONDUCTED IN ACCORDANCE WITH PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION THAT AGGRAVATING CIRCUMSTANCES EXIST TO INDICATE THE INDIVIDUAL IS UNSAFE FOR DRIVING FOR ANY PURPOSE. IN REFUSING TO ISSUE A PROBATIONARY LICENSE, THE DEPARTMENT SHALL MAKE SPECIFIC FINDINGS OF FACT TO SUPPORT SUCH REFUSAL.

**SECTION 29.** 19-1-103 (1) (a) (II), Colorado Revised Statutes, is amended to read:

**19-1-103. Definitions.** As used in this title or in the specified portion of this title, unless the context otherwise requires:

(1) (a) "Abuse" or "child abuse or neglect", as used in part 3 of article 3 of this title, means an act or omission in one of the following categories that threatens the health or welfare of a child:

(II) Any case in which a child is subjected to ~~sexual assault or molestation, sexual exploitation, or prostitution~~ UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1) (b), C.R.S.;

**SECTION 30.** 19-3-304 (1), Colorado Revised Statutes, is amended to read:

**19-3-304. Persons required to report child abuse or neglect.** (1) Except as otherwise provided by section 19-3-307 and sections 25-1-122 (4) (d) and 25-4-1404 (1) (d), C.R.S., any person specified in subsection (2) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately UPON RECEIVING SUCH INFORMATION report or cause a report to be made of such fact to the county department or local law enforcement agency.

**SECTION 31. Effective date - applicability.** This act shall take effect July 1, 2002, and shall apply to offenses committed on or after said date with the following exceptions: (1) If House Bill 02-1292 is enacted at the Second Regular Session of the Sixty-third General Assembly and becomes law, sections 25 and 26 shall take effect July 1, 2002, and shall apply to offenses committed on or after said date; (2) If House Bill 02-1292 is not enacted at the Second Regular Session of the Sixty-third General Assembly or does not become law, sections 25 and 26 shall take effect July 1, 2003, and shall apply to offenses committed on or after said date; (3) Sections 27 and 28 shall only take effect if Senate Bill 02-039, is enacted at the Second Regular Session of the Sixty-third General Assembly and becomes law; and, (4) Section 15 shall take effect only if Senate Bill 02-039, is not enacted at the Second Regular Session of the Sixty-third General Assembly or does not become law.

**SECTION 32. 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: June 7, 2002