CHAPTER 342

MOTOR VEHICLES AND TRAFFIC REGULATION

SENATE BILL 02-057

BY SENATOR(S) Hagedorn;
also REPRESENTATIVE(S) Smith, Groff, and Williams S.

AN ACT

CONCERNING A NONSUBSTANTIVE RECODIFICATION OF STATUTES RELATING TO THE OPERATION OF MOTOR VEHICLES BY PERSONS WHO HAVE CONSUMED CHEMICAL SUBSTANCES INCLUDING ALCOHOL.

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

SECTION 1. Part 13 of article 4 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

42-4-1300.3. Definitions. AS USED IN THIS PART 13, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BAC" MEANS EITHER:

(a) A PERSON'S BLOOD ALCOHOL CONTENT, EXPRESSED IN GRAMS OF ALCOHOL PER ONE HUNDRED MILLILITERS OF BLOOD AS SHOWN BY ANALYSIS OF SUCH PERSON'S BLOOD; OR

(b) A PERSON'S BREATH ALCOHOL CONTENT, EXPRESSED IN GRAMS OF ALCOHOL PER TWO HUNDRED TEN LITERS OF BREATH AS SHOWN BY ANALYSIS OF SUCH PERSON'S BREATH.

(2) "DUI" MEANS DRIVING UNDER THE INFLUENCE, AS SET FORTH IN SECTION 42-4-1301 (1) (f), AND USE OF THE TERM SHALL INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301(1) (a).

(3) "DUI PER SE" MEANS DRIVING WITH A BAC OF 0.10 OR MORE, AND USE OF THE TERM SHALL INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301(2) (a).

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) "DWAI" MEANS DRIVING WHILE ABILITY IMPAIRED, AS SET FORTH IN SECTION 42-4-1301 (1) (g), AND USE OF THE TERM SHALL INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301 (1) (b).

(5) "HABITUAL USER" SHALL INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301(1) (c).

(6) "UDD" MEANS UNDERAGE DRINKING AND DRIVING, AND USE OF THE TERM SHALL INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION 42-4-1301 (2) (a.5).

SECTION 2. 42-4-1301, Colorado Revised Statutes, is amended, WITH THE RELOCATION OF PROVISIONS, to read:

42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - penalties. (1) (a) It is a misdemeanor for any person who is under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, to drive any vehicle in this state.

(b) It is a misdemeanor for any person who is impaired by alcohol or by one or more drugs, or by a combination of alcohol and one or more drugs, to drive any vehicle in this state.

(c) It is a misdemeanor for any person who is an habitual user of any controlled substance defined in section 12-22-303 (7), C.R.S., to drive any vehicle in this state.

(d) For the purposes of this subsection (1), one or more drugs shall mean all substances defined as a drug in section 12-22-303 (13), C.R.S., and all controlled substances defined in section 12-22-303 (7), C.R.S., and glue-sniffing, aerosol inhalation, and the inhalation of any other toxic vapor or vapors.

(e) The fact that any person charged with a violation of this subsection (1) is or has been entitled to use one or more drugs under the laws of this state, including, but not limited to, the medical use of marijuana pursuant to section 18-18-406.3, C.R.S., shall not constitute a defense against any charge of violating this subsection (1).

(f) "Driving under the influence" means driving a vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, which alcohol alone, or one or more drugs alone, or alcohol combined with one or more drugs affects the person to a degree that the person is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

(g) "Driving while ability impaired" means driving a vehicle when a person has consumed alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, which alcohol alone, or one or more drugs alone, or alcohol combined with one or more drugs, affects the person to the slightest degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

(h) Pursuant to section 16-2-106, C.R.S., in charging ~~a violation of paragraph (a) of this subsection (1)~~ THE OFFENSE OF DUI, it shall be sufficient to describe the offense charged as "drove a vehicle under the influence of alcohol or drugs or both".

(i) Pursuant to section 16-2-106, C.R.S., in charging ~~a violation of paragraph (b) of this subsection (1)~~ THE OFFENSE OF DWAI, it shall be sufficient to describe the offense charged as "drove a vehicle while impaired by alcohol or drugs or both".

(2) (a) It is a misdemeanor for any person to drive any vehicle in this state when the ~~amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood is 0.10 or more grams of alcohol per hundred milliliters of blood or 0.10 or more grams of alcohol per two hundred ten liters of breath~~ PERSON'S BAC IS 0.10 OR MORE at the time of driving or within two hours after driving. During a trial, if the state's evidence raises the issue, or if a defendant presents some credible evidence, that the defendant consumed alcohol between the time that the defendant stopped driving and the time that testing occurred, such issue shall be an affirmative defense, and the prosecution must establish beyond a reasonable doubt that the minimum 0.10 blood or breath alcohol content required in this paragraph (a) was reached as a result of alcohol consumed by the defendant before the defendant stopped driving.

(a.5) It is a class A traffic infraction for any person under twenty-one years of age to drive any vehicle in this state when the ~~amount of alcohol~~ PERSON'S BAC, as shown by analysis of the person's breath, ~~subject to subsection (7) of this section,~~ is at least 0.02 but not more than 0.05 ~~grams of alcohol per two hundred ten liters of breath~~ at the time of driving or within two hours after driving.

(b) In any prosecution for ~~a violation of this subsection (2)~~ THE OFFENSE OF DUI PER SE, the defendant shall be entitled to offer direct and circumstantial evidence to show that there is a disparity between what the tests show and other facts so that the trier of fact could infer that the tests were in some way defective or inaccurate. Such evidence may include testimony of nonexpert witnesses relating to the absence of any or all of the common symptoms or signs of intoxication for the purpose of impeachment of the accuracy of the analysis of the person's blood or breath.

(c) Pursuant to section 16-2-106, C.R.S., in charging ~~a violation of this subsection (2)~~ THE OFFENSE OF DUI PER SE, it shall be sufficient to describe the offense charged as "drove a vehicle with excessive alcohol content".

(3) The offenses described in subsections (1) and (2) of this section are strict liability offenses.

(4) **[Formerly (8)]** No court shall accept a plea of guilty to a non-alcohol-related or non-drug-related traffic offense or guilty to ~~an offense under paragraph (a.5) of subsection (2) of this section~~ THE OFFENSE OF UDD from a person charged with ~~a violation of subsection (1) or (2) (a) of this section~~ DUI, DUI PER SE, DWAI, OR HABITUAL USER; except that the court may accept a plea of guilty to a non-alcohol-related or non-drug-related traffic offense or to ~~an offense under paragraph (a.5) of subsection (2) of this section~~ UDD upon a good faith representation by the prosecuting attorney that the attorney could not establish a prima facie case if the defendant were brought to trial on the original alcohol-related

or drug-related offense.

(5) **[Formerly (4)]** Notwithstanding the provisions of section 18-1-408, C.R.S., during a trial of any person accused of ~~violating paragraph (a) of subsection (1) and subsection (2) of this section~~ BOTH DUI AND DUI PER SE, the court shall not require the prosecution to elect between the two violations. The court or a jury may consider and convict the person of either ~~paragraph (a) or paragraph (b) of subsection (1)~~ DUI OR DWAI, or ~~subsection (2)~~ DUI PER SE, or both ~~paragraph (a) of subsection (1) and subsection (2)~~ DUI AND DUI PER SE, or both ~~paragraph (b) of subsection (1) and subsection (2) of this section~~ DWAI AND DUI PER SE. If the person is convicted of more than one violation, the sentences imposed shall run concurrently.

(6) (a) **[Formerly IP(5)]** In any prosecution for ~~a violation of paragraph (a) or (b) of subsection (1) of this section~~ DUI OR DWAI, the ~~amount of alcohol in the~~ defendant's ~~blood or breath~~ BAC at the time of the commission of the alleged offense or within a reasonable time thereafter ~~as shown by analysis of the defendant's blood or breath, shall give~~ GIVES rise to the following presumptions OR INFERENCES:

(I) **[Formerly (5) (a)]** If ~~there was~~ at such time THE DEFENDANT'S BAC WAS 0.05 or less, ~~grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or if there was at such time 0.05 or less grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath,~~ it shall be presumed that the defendant was not under the influence of alcohol and that the defendant's ability to operate a vehicle was not impaired by the consumption of alcohol.

(II) **[Formerly (5) (b)]** If ~~there was~~ at such time THE DEFENDANT'S BAC WAS in excess of 0.05 but less than 0.10, ~~grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or if there was at such time in excess of 0.05 but less than 0.10 grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath,~~ such fact ~~shall give~~ GIVES rise to the ~~presumption~~ PERMISSIBLE INFERENCE that the defendant's ability to operate a vehicle was impaired by the consumption of alcohol, and such fact may also be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.

(III) **[Formerly (5) (c)]** If ~~there was~~ at such time THE DEFENDANT'S BAC WAS 0.10 or more, ~~grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or if there was at such time 0.10 or more grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath, it shall be presumed~~ SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE that the defendant was under the influence of alcohol.

(b) **[Formerly (5) (d)]** The limitations of this subsection ~~(5)~~ (6) shall not be construed as limiting the introduction, reception, or consideration of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or whether or not the defendant's ability to operate a vehicle was impaired by the consumption of alcohol.

(c) **[Formerly (11)]** In all actions, suits, and judicial proceedings in any court of this state concerning alcohol-related or drug-related traffic offenses, the court shall

take judicial notice of methods of testing a person's alcohol or drug level and of the design and operation of devices, as certified by the department of public health and environment, for testing a person's blood, breath, saliva, or urine to determine such person's alcohol or drug level. This ~~subsection (11)~~ PARAGRAPH (c) shall not prevent the necessity of establishing during a trial that the testing devices used were working properly and that such testing devices were properly operated. Nothing in this ~~subsection (11)~~ PARAGRAPH (c) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

(d) **[Formerly (7) (e)]** If a person refuses to take or to complete, or to cooperate with the completing of, any test or tests as provided in ~~this subsection (7)~~ SECTION 42-4-1301.1 and such person subsequently stands trial for ~~a violation of subsection (1) of this section~~ DUI OR DWAI, the refusal to take or to complete, or to cooperate with the completing of, any test or tests shall be admissible into evidence at the trial, and a person may not claim the privilege against self-incrimination with regard to admission of refusal to take or to complete, or to cooperate with the completing of, any test or tests.

(e) **Involuntary blood test - admissibility. [Formerly last sentence of (7) (a) (IV)]** Evidence acquired through ~~such~~ AN involuntary blood test PURSUANT TO SECTION 42-4-1301.1 (3) shall be admissible in any prosecution for ~~a violation of subsection (1) or (2) of this section~~ DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD, and ~~for a violation of~~ IN ANY PROSECUTION FOR CRIMINALLY NEGLIGENT HOMICIDE PURSUANT TO section 18-3-105, C.R.S., VEHICULAR HOMICIDE PURSUANT TO SECTION 18-3-106 (1) (b), C.R.S., ASSAULT IN THE THIRD DEGREE PURSUANT TO SECTION 18-3-204, C.R.S., or VEHICULAR ASSAULT PURSUANT TO SECTION 18-3-205 (1) (b), C.R.S.

(f) **Chemical test - admissibility. [(f) and (g) are formerly (7) (b) (I)]** ~~The tests shall be administered at the direction of a law enforcement officer having probable cause to believe that the person had been driving a motor vehicle in violation of subsection (1) or (2) of this section and in accordance with rules and regulations prescribed by the state board of health concerning the health of the person being tested and the accuracy of such testing.~~ **[First sentence relocated to section 42-4-1301.1 (5)]** Strict compliance with ~~such~~ THE rules and regulations PRESCRIBED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT shall not be a prerequisite to the admissibility of test results at trial unless the court finds that the extent of noncompliance with a board of health rule has so impaired the validity and reliability of the testing method and the test results as to render the evidence inadmissible. In all other circumstances, failure to strictly comply with such rules and regulations shall only be considered in the weight to be given to the test results and not to the admissibility of such test results.

(g) It shall not be a prerequisite to the admissibility of test results at trial that the prosecution present testimony concerning the composition of any kit used to obtain blood, urine, saliva, or breath specimens. A sufficient evidentiary foundation concerning the compliance of such kits with the rules and regulations of the department of public health and environment shall be established by the introduction of a copy of the manufacturer's or supplier's certificate of compliance with such rules and regulations if such certificate specifies the contents, sterility, chemical makeup, and amounts of chemicals contained in such kit.

(h) **[Formerly part of (7) (b) (II)]** In any trial for a violation of ~~subsection (1) or (2) of~~ this section, the testimony of a law enforcement officer that he or she witnessed the taking of a blood specimen by a person who the law enforcement officer reasonably believed was authorized to withdraw blood specimens shall be sufficient evidence that such person was so authorized, and testimony from the person who obtained the blood specimens concerning such person's authorization to obtain blood specimens shall not be a prerequisite to the admissibility of test results concerning the blood specimens obtained.

(i) **[Formerly (6)]** (I) Following the lawful contact with a person who has been driving a vehicle, and when a law enforcement officer reasonably suspects that a person was driving a vehicle while under the influence of or while impaired by alcohol, the law enforcement officer may conduct a preliminary screening test using a device approved by the executive director of the department of public health and environment after first advising the driver that the driver may either refuse or agree to provide a sample of the driver's breath for such preliminary test; except that, if the driver is under twenty-one years of age, the law enforcement officer may, after providing such advisement to the person, conduct such preliminary screening test if the officer reasonably suspects that the person has consumed any alcohol.

(II) The results of this preliminary screening test may be used by a law enforcement officer in determining whether probable cause exists to believe such person was driving a vehicle in violation of ~~paragraph (a) or (b) of subsection (1) or subsection (2) of~~ this section and whether to administer a test pursuant to ~~paragraph (a) of subsection (7) of this~~ section 42-4-1301.1 (2).

(III) Neither the results of such preliminary screening test nor the fact that the person refused such test shall be used in any court action except in a hearing outside of the presence of a jury, when such hearing is held to determine if a law enforcement officer had probable cause to believe that the driver committed a violation of ~~paragraph (a) or (b) of subsection (1) or subsection (2) of~~ this section. The results of such preliminary screening test shall be made available to the driver or the driver's attorney on request. ~~The preliminary screening test shall not substitute for or qualify as the test or tests required by paragraph (a) of subsection (7) of this section.~~ **[Preceding sentence relocated to 42-4-1301.1 (7)]**

(7) **Penalties.** (a) (I) **[Formerly (9) (a) (I)]** Except as otherwise provided in subparagraphs (II) and ~~(III)~~ (IV) 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~~ DUI, DUI PER SE, OR HABITUAL USER shall be punished by:

(A) Imprisonment in the county jail for not less than five days nor more than one year, THE MINIMUM PERIOD OF WHICH SHALL BE MANDATORY EXCEPT AS OTHERWISE PROVIDED IN SECTION 42-4-1301.3; and

(B) ~~in addition, the court may impose~~ IN THE COURT'S DISCRETION, a fine of not less than three hundred dollars nor more than one thousand dollars; AND

(C) ~~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~~ WHICH shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(II) **[Formerly (9) (a) (II)]** Upon conviction of a violation described in sub-subparagraph (A) or (B) of ~~this~~ subparagraph ~~(II)~~ (III) OF THIS PARAGRAPH (a), an offender shall be punished by:

(A) Imprisonment in the county jail for not less than ninety days nor more than one year, THE MINIMUM PERIOD OF WHICH SHALL BE MANDATORY; EXCEPT THAT THE COURT MAY SUSPEND UP TO EIGHTY DAYS OF THE PERIOD OF IMPRISONMENT IF THE OFFENDER COMPLIES WITH THE PROVISIONS OF SECTION 42-4-1301.3; and

(B) ~~in addition, the court may impose~~ IN THE COURT'S DISCRETION, a fine of not less than five hundred dollars nor more than one thousand five hundred dollars; AND

(C) ~~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~~ WHICH shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(III) ~~This~~ Subparagraph (II) OF THIS PARAGRAPH (a) shall apply to:

(A) A ~~violation of paragraph (a) or (c) of subsection (1) or paragraph (a) of subsection (2) of this section~~ CONVICTION FOR DUI, DUI PER SE, OR HABITUAL USER, 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~~ FOR DUI, DUI PER SE, OR HABITUAL USER, or ~~of~~ FOR VEHICULAR HOMICIDE PURSUANT TO section 18-3-106 (1) (b) (I) or VEHICULAR ASSAULT PURSUANT TO SECTION 18-3-205 (1) (b) (I), C.R.S., or of driving while such person's driver's license was under restraint pursuant to section ~~42-2-138~~ 42-2-138 (4) (b); or

(B) A ~~violation of paragraph (a) or (b) of subsection (1) of this section or of paragraph (a) of subsection (2) of this section~~ CONVICTION FOR DUI, DWAI, OR DUI PER SE when the ~~amount of alcohol in such~~ person's ~~blood, as shown by analysis of the person's blood or breath,~~ BAC 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) and (D) (Deleted by amendment, L. 2001, 2nd Ex. Sess., p. 2, § 3, effective September 25, 2001.)~~

(IV) **[Formerly (9) (a) (III)]** Upon a conviction ~~of a violation of paragraph (a) or~~

~~(c) of subsection (1) or paragraph (a) of subsection (2) of this section~~ FOR DUI, DUI PER SE, OR HABITUAL USER, 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~~ FOR DWAI, an offender shall be punished by:

(A) Imprisonment in the county jail for not less than seventy days nor more than one year, THE MINIMUM PERIOD OF WHICH SHALL BE MANDATORY; EXCEPT THAT THE COURT MAY SUSPEND UP TO SIXTY-THREE DAYS OF THE PERIOD OF IMPRISONMENT IF THE OFFENDER COMPLIES WITH THE PROVISIONS OF SECTION 42-4-1301.3; and

(B) ~~in addition, the court may impose~~ IN THE COURT'S DISCRETION, A fine of not less than four hundred fifty dollars nor more than one thousand five hundred dollars; AND

(C) ~~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~~ WHICH shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

~~(IV) and (V) (Deleted by amendment, L. 2001, 2nd Ex. Sess., p. 2, § 3, effective September 25, 2001.)~~

(b) (I) **[Formerly (9) (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~~ DWAI shall be punished by:

(A) Imprisonment in the county jail for not less than two days nor more than one hundred eighty days, THE MINIMUM PERIOD OF WHICH SHALL BE MANDATORY EXCEPT AS PROVIDED IN SECTION 42-4-1301.3; and

(B) ~~in addition, the court may impose~~ IN THE COURT'S DISCRETION, A fine of not less than one hundred dollars nor more than five hundred dollars; AND

(C) ~~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 twenty-four hours nor more than forty-eight hours of useful public service, the performance of the minimum period of ~~service~~ WHICH shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(II) **[Formerly (9) (b) (II)]** Upon conviction of a second or subsequent ~~violation of paragraph (b) of subsection (1) of this section~~ OFFENSE OF DWAI, an offender shall be punished by:

(A) Imprisonment in the county jail for not less than forty-five days nor more than one year, THE MINIMUM PERIOD OF WHICH SHALL BE MANDATORY; EXCEPT THAT THE COURT MAY SUSPEND UP TO FORTY DAYS OF THE PERIOD OF IMPRISONMENT IF THE OFFENDER COMPLIES WITH THE PROVISIONS OF SECTION 42-4-1301.3; and

(B) ~~in addition, the court may impose~~ IN THE COURT'S DISCRETION, A fine of not less than three hundred dollars nor more than one thousand dollars; AND

(C) ~~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~~ WHICH shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

~~(A) to (D) (Deleted by amendment, L. 2001, 2nd Ex. Sess., p. 2, § 3, effective September 25, 2001.)~~

(III) **[Formerly (9) (b) (III)]** Upon conviction ~~of a violation of paragraph (b) of subsection (1) of this section~~ FOR DWAI, 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~~ FOR DUI, DUI PER SE, OR HABITUAL USER, or ~~of~~ VEHICULAR HOMICIDE PURSUANT TO section 18-3-106 (1) (b) (I) or VEHICULAR ASSAULT PURSUANT TO SECTION 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:

(A) Imprisonment in the county jail for not less than sixty days nor more than one year, THE MINIMUM PERIOD OF WHICH SHALL BE MANDATORY; EXCEPT THAT THE COURT MAY SUSPEND UP TO FIFTY-FOUR DAYS OF THE PERIOD OF IMPRISONMENT IF THE OFFENDER COMPLIES WITH THE PROVISIONS OF SECTION 42-4-1301.3; and

(B) ~~in addition, the court may impose~~ IN THE COURT'S DISCRETION, A fine of not less than four hundred dollars nor more than one thousand two hundred dollars; AND

(C) ~~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~~ WHICH shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(IV) ~~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) to (D) (Deleted by amendment, L. 2001, 2nd Ex. Sess., p. 2, § 3, effective September 25, 2001.)~~

~~(V) and (VI) (Deleted by amendment, L. 2001, 2nd Ex. Sess., p. 2, § 3, effective September 25, 2001.)~~

(c) (I) **[Formerly (9) (d)]** For the purposes of paragraphs (a) and (b) of this subsection ~~(9)~~ (7), a person shall be deemed to have a previous conviction ~~of subsection (1) or (2) of this section~~ FOR DUI, DUI PER SE, DWAI, OR HABITUAL USER, or VEHICULAR HOMICIDE PURSUANT TO section 18-3-106 (1) (b) (I) or VEHICULAR ASSAULT PURSUANT TO SECTION 18-3-205 (1) (b) (I), C.R.S., if such person has been convicted under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States of an act ~~which~~ THAT, if committed within this state, would ~~be a violation of subsection (1) or (2) of this section~~ CONSTITUTE THE OFFENSE OF DUI, DUI PER SE, DWAI, OR HABITUAL USER, or VEHICULAR HOMICIDE PURSUANT TO section 18-3-106 (1) (b) (I) or VEHICULAR ASSAULT PURSUANT TO SECTION 18-3-205 (1) (b) (I), C.R.S.

(II) **[Formerly (9) (e) (II)]** For sentencing purposes concerning convictions for second and subsequent offenses, prima facie proof of a defendant's previous convictions shall be established when the prosecuting attorney and the defendant stipulate to the existence of the prior conviction or convictions or the prosecuting attorney presents to the court a copy of the driving record of the defendant provided by the department of revenue of this state, or provided by a similar agency in another state, ~~which~~ THAT contains a reference to such previous conviction or convictions or presents an authenticated copy of the record of the previous conviction or judgment from any court of record of this state or from a court of any other state, the United States, or any territory subject to the jurisdiction of the United States. The court shall not proceed to immediate sentencing when there is not a stipulation to prior convictions or if the prosecution requests an opportunity to obtain a driving record or a copy of a court record. The prosecuting attorney shall not be required to plead or prove any previous convictions at trial, and sentencing concerning convictions for second and subsequent offenses shall be a matter to be determined by the court at sentencing.

(III) **[Formerly (13)]** As used in this ~~section~~ PART 13, "convicted" includes a plea of no contest accepted by the court.

(d) **[Formerly IP(9) (g), (9) (g) (I), (9) (g) (II), and (9) (g) (III) (B)]** In addition to the penalties prescribed in this subsection ~~(9)~~ (7):

(I) Persons convicted of ~~violations of subsection (1) or (2) of this section~~ DUI, DUI PER SE, DWAI, HABITUAL USER, AND UDD are subject to the costs imposed by

section 24-4.1-119 (1) (c), C.R.S., relating to the crime victim compensation fund;

(II) Persons convicted of ~~violations of subsection (1) or paragraph (a) of subsection (2) of this section~~ DUI, DUI PER SE, DWAI, AND HABITUAL USER are subject to an additional penalty surcharge of not less than twenty-five dollars and not more than five hundred dollars for programs to address persistent drunk drivers. Any moneys collected for such surcharge shall be transmitted to the state treasurer, who shall credit the same to the persistent drunk driver cash fund created by section 42-3-130.5.

~~(III) (B) (Deleted by amendment, L. 2000, p. 1078, § 7, effective July 1, 2000.)~~

(e) **[Formerly part of (9) (h)]** In addition to any other penalty provided by law, the court may sentence a defendant who is convicted pursuant to this section to a period of probation for purposes of treatment not to exceed two years. As a condition of probation, the defendant shall be required to make restitution in accordance with the provisions of section 16-11-204.5, C.R.S.

(f) **[Formerly part of (9) (h)]** In addition to any other penalty provided by law, the court may sentence a defendant to attend and pay for one appearance at a victim impact panel approved by the court, for which the fee assessed to the defendant shall not exceed twenty-five dollars.

(g) **[Formerly part of 42-4-1301 (10) (d)]** In addition to any fines, fees, or costs levied against a person convicted of ~~a violation of subsection (1) or (2) of this section~~ DUI, DUI PER SE, DWAI, HABITUAL USER, AND UDD, the judge shall assess each such person for the cost of the presentence or postsentence alcohol and drug evaluation and supervision services.

(h) IN ADDITION TO ANY OTHER PENALTIES PRESCRIBED IN THIS PART 13, THE COURT SHALL ASSESS AN AMOUNT, NOT TO EXCEED SIXTY DOLLARS, UPON ANY PERSON REQUIRED TO PERFORM USEFUL PUBLIC SERVICE.

~~(12) (Deleted by amendment, L. 95, p. 315, § 3, effective July 1, 1995.)~~

SECTION 3. Part 13 of article 4 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS CONTAINING RELOCATED PROVISIONS, WITH AMENDMENTS, to read:

42-4-1301.1. Expressed consent for the taking of blood, breath, urine, or saliva sample - testing. (1) **[Formerly 42-4-1301 (7) (a) (I)]** ~~On and after July 1, 1983,~~ Any person who drives any motor vehicle upon the streets and highways and elsewhere throughout this state shall be deemed to have expressed such person's consent to the provisions of this ~~paragraph (a)~~ SECTION.

(2) (a) (I) **[Formerly 42-4-1301 (7) (a) (II) (A)]** Any person who drives any motor vehicle upon the streets and highways and elsewhere throughout this state shall be required to take and complete, and to cooperate in the taking and completing of, any test or tests of such person's breath or blood for the purpose of determining the alcoholic content of the person's blood or breath when so requested and directed by a law enforcement officer having probable cause to believe that the person was

driving a motor vehicle in violation of ~~subsection (1) or (2) of this section~~ THE PROHIBITIONS AGAINST DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD. Except as otherwise provided in this section, if a person who is twenty-one years of age or older requests that said test be a blood test, then the test shall be of his or her blood; but, if such person requests that a specimen of his or her blood not be drawn, then a specimen of such person's breath shall be obtained and tested. A person who is under twenty-one years of age shall be entitled to request a blood test unless the alleged violation is ~~a class A traffic infraction~~ UDD, in which case a specimen of such person's breath shall be obtained and tested, except as provided in ~~sub-subparagraph (B) of this~~ subparagraph (II) OF THIS PARAGRAPH (a).

(II) **[Formerly 42-4-1301 (7) (a) (II) (B)]** If a person elects either a blood test or a breath test, such person shall not be permitted to change such election, and, if such person fails to take and complete, and to cooperate in the completing of, the test elected, such failure shall be deemed to be a refusal to submit to testing. If such person is unable to take, or to complete, or to cooperate in the completing of a breath test because of injuries, illness, disease, physical infirmity, or physical incapacity, or if such person is receiving medical treatment at a location at which a breath testing instrument certified by the department of public health and environment is not available, the test shall be of such person's blood.

(III) **[Formerly 42-2-126 (2) (a) (II)]** If a law enforcement officer requests a test under ~~the provisions of section 42-4-1301 (7) (a) (II)~~ THIS PARAGRAPH (a), the person must cooperate with the request such that the sample of blood or breath can be obtained within two hours of the person's driving.

(b) (I)**[Formerly 42-4-1301 (7) (a) (III)]** Any person who drives any motor vehicle upon the streets and highways and elsewhere throughout this state shall be required to submit to and to complete, and to cooperate in the completing of, a test or tests of such person's blood, saliva, and urine for the purpose of determining the drug content within the person's system when so requested and directed by a law enforcement officer having probable cause to believe that the person was driving a motor vehicle in violation of ~~paragraph (a), (b), or (c) of subsection (1) of this section~~ THE PROHIBITIONS AGAINST DUI, DWAI, OR HABITUAL USER and when it is reasonable to require such testing of blood, saliva, and urine to determine whether such person was under the influence of, or impaired by, one or more drugs, or one or more controlled substances, or a combination of both alcohol and one or more drugs, or a combination of both alcohol and one or more controlled substances.

(II) IF A LAW ENFORCEMENT OFFICER REQUESTS A TEST UNDER THIS PARAGRAPH (b), THE PERSON MUST COOPERATE WITH THE REQUEST SUCH THAT THE SAMPLE OF BLOOD, SALIVA, OR URINE CAN BE OBTAINED WITHIN TWO HOURS OF THE PERSON'S DRIVING.

(3) **[Formerly 42-4-1301 (7) (a) (IV)]** Any person who is required to take and to complete, and to cooperate in the completing of, any test or tests shall cooperate with the person authorized to obtain specimens of such person's blood, breath, saliva, or urine, including the signing of any release or consent forms required by any person, hospital, clinic, or association authorized to obtain such specimens. If such person does not cooperate with the person, hospital, clinic, or association authorized to obtain such specimens, including the signing of any release or consent forms, such

noncooperation shall be considered a refusal to submit to testing. No law enforcement officer shall physically restrain any person for the purpose of obtaining a specimen of such person's blood, breath, saliva, or urine for testing except when the officer has probable cause to believe that the person has committed ~~a violation of~~ CRIMINALLY NEGLIGENT HOMICIDE PURSUANT TO section 18-3-105, VEHICULAR HOMICIDE PURSUANT TO SECTION 18-3-106 (1) (b), ASSAULT IN THE THIRD DEGREE PURSUANT TO SECTION 18-3-204, or VEHICULAR ASSAULT PURSUANT TO SECTION 18-3-205 (1) (b), C.R.S., and the person is refusing to take or to complete, or to cooperate in the completing of, any test or tests, then, in such event, the law enforcement officer may require a blood test. ~~Evidence acquired through such involuntary blood test shall be admissible in any prosecution for a violation of subsection (1) or (2) of this section and for a violation of section 18-3-105, 18-3-106 (1) (b), 18-3-204, or 18-3-205 (1) (b), C.R.S.~~ **[Last sentence moved to 42-4-1301 (6) (e)]**

(4) **[Formerly 42-4-1301 (7) (a) (V)]** Any driver of a commercial motor vehicle requested to submit to a test as provided in ~~subparagraph (II) of this~~ paragraph (a) OR (b) OF SUBSECTION (2) OF THIS SECTION shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test shall result in an out-of-service order as defined under section 42-2-402 (8) for a period of twenty-four hours and a revocation of the privilege to operate a commercial motor vehicle for one year as provided under section 42-2-126.

(5) **[Formerly first sentence of 42-4-1301 (7) (b) (I)]** The tests shall be administered at the direction of a law enforcement officer having probable cause to believe that the person had been driving a motor vehicle in violation of ~~subsection (1) or (2) of this~~ section 42-4-1301 and in accordance with rules and regulations prescribed by the ~~state board~~ DEPARTMENT of PUBLIC health AND ENVIRONMENT concerning the health of the person being tested and the accuracy of such testing.

(6) **[Formerly 42-4-1301 (7) (b) (II)]** (a) No person except a physician, a registered nurse, a paramedic, as certified in part 2 of article 3.5 of title 25, C.R.S., an emergency medical technician, as defined in part 1 of article 3.5 of title 25, C.R.S., or a person whose normal duties include withdrawing blood samples under the supervision of a physician or registered nurse shall be entitled to withdraw blood for the purpose of determining the alcoholic or drug content therein. ~~In any trial for a violation of subsection (1) or (2) of this section, the testimony of a law enforcement officer that he or she witnessed the taking of a blood specimen by a person who the law enforcement officer reasonably believed was authorized to withdraw blood specimens shall be sufficient evidence that such person was so authorized, and testimony from the person who obtained the blood specimens concerning such person's authorization to obtain blood specimens shall not be a prerequisite to the admissibility of test results concerning the blood specimens obtained.~~ **[Preceding sentence relocated to 42-4-1301 (6) (h)]**

(b) No civil liability shall attach to any person authorized to obtain blood, breath, saliva, or urine specimens or to any hospital, clinic, or association in or for which such specimens are obtained as provided in this ~~subsection (7)~~ SECTION as a result of the act of obtaining such specimens from any person submitting thereto if such specimens were obtained according to the rules and regulations prescribed by the ~~state board~~ DEPARTMENT of PUBLIC health AND ENVIRONMENT; except that this

provision shall not relieve any such person from liability for negligence in the obtaining of any specimen sample.

(7) **[Formerly last sentence of 42-4-1301 (6)]** ~~The~~ A preliminary screening test CONDUCTED BY A LAW ENFORCEMENT OFFICER PURSUANT TO SECTION 42-4-1301 (6) (i) shall not substitute for or qualify as the test or tests required by ~~paragraph (a) of~~ subsection ~~(7)~~ (2) of this section.

(8) **[Formerly 42-4-1301 (7) (c)]** Any person who is dead or unconscious shall be tested to determine the alcohol or drug content of the person's blood or any drug content within such person's system as provided in this ~~subsection (7)~~ SECTION. If a test cannot be administered to a person who is unconscious, hospitalized, or undergoing medical treatment because the test would endanger the person's life or health, the law enforcement agency shall be allowed to test any blood, urine, or saliva ~~which~~ THAT was obtained and not utilized by a health care provider and shall have access to that portion of the analysis and results of any tests administered by such provider ~~which~~ THAT shows the alcohol or drug content of the person's blood, urine, or saliva or any drug content within the person's system. Such test results shall not be considered privileged communications, and the provisions of section 13-90-107, C.R.S., relating to the physician-patient privilege shall not apply. Any person who is dead, in addition to the tests prescribed, shall also have the person's blood checked for carbon monoxide content and for the presence of drugs, as prescribed by the department of public health and environment. Such information obtained shall be made a part of the accident report.

42-4-1301.2. Refusal of test - effect on driver's license - revocation - reinstatement. (1) **[Formerly 42-4-1301 (7) (d)]** If a person refuses to take, or to complete, or to cooperate with the completing of any test or tests as provided in ~~this subsection (7)~~ SECTION 42-4-1301.1, the person shall be subject to license revocation pursuant to the provisions of section 42-2-126. Such revocation shall take effect prior to and shall stay the remainder of any previous suspension, or denial in lieu of suspension, and shall not run concurrently, in whole or in part, with any previous or subsequent suspensions, revocations, or denials ~~which~~ THAT may be provided for by law, including any suspension, revocation, or denial ~~which~~ THAT results from a conviction of criminal charges arising out of the same occurrence for a violation of ~~subsection (1) or (2) of this~~ section 42-4-1301. The remainder of any suspension, or denial in lieu of suspension, stayed pursuant to the provisions of this ~~paragraph (d)~~ SUBSECTION (1) shall be reinstated following the completion of any revocation provided for in section 42-2-126. Any revocation taken under said section shall not preclude other actions ~~which~~ THAT the department is required to take in the administration of the provisions of this title.

(2) **[Formerly 42-4-1301 (9) (g) (III) (A)]** A person convicted of ~~a violation of paragraph (a) or (b) of subsection (1) or of paragraph (a) of subsection (2) of this section~~ DUI, DWAI, OR DUI PER SE, which violation occurred on or after July 1, 2000, and within five years after the date of a previous violation for which there was a conviction ~~under paragraph (a) or (b) of subsection (1) or paragraph (a) of subsection (2) of this section~~ OF DUI, DWAI, OR DUI PER SE, shall be required to obtain a restricted license pursuant to the provisions of section 42-2-132.5 for a period of not less than one year after reinstatement.

42-4-1301.3. Alcohol and drug driving safety program. (1) **[Formerly 42-4-1301 (9) (e) (I)]** Upon conviction of a violation of ~~subsection (1) or (2) of this~~ section 42-4-1301, the court shall sentence the defendant in accordance with the provisions of ~~paragraphs (a) and (b) of this subsection (9)~~ THIS SECTION AND OTHER APPLICABLE PROVISIONS OF THIS PART 13. The court shall consider the alcohol and drug evaluation required pursuant to ~~subsection (10) of~~ this section prior to sentencing; except that the court may proceed to immediate sentencing without considering such alcohol and drug evaluation if the defendant has no prior CONVICTIONS or pending charges under this section and neither the defendant nor the prosecuting attorney objects. If the court proceeds to immediate sentencing, without considering such alcohol and drug evaluation, such alcohol and drug evaluation shall be conducted after sentencing, and the court shall order the defendant to complete the education and treatment program recommended in such alcohol and drug evaluation. If the defendant disagrees with the education and treatment program recommended in such alcohol and drug evaluation, the defendant may request the court to hold a hearing to determine which education and treatment program should be completed by the defendant.

(2) (a) **[Formerly 42-4-1301 (9) (f) (I)]** (I) The sentence of any person subject to the provisions of ~~subparagraph (II), (III), or (IV) of paragraph (a) or subparagraph (II), (III), or (IV) of paragraph (b) of this subsection (9)~~ SECTION 42-4-1301 (7) (a) (II), (7) (a) (IV), (7) (b) (II), OR (7) (b) (III) may be suspended to the extent provided for in said ~~subparagraphs~~ SECTION if THE OFFENDER:

(A) ~~The offender~~ Receives a presentence alcohol and drug evaluation;

(B) Based on that evaluation, satisfactorily completes an appropriate level I or level II alcohol and drug driving safety education or treatment program; and

(C) 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.

(II) If, at any time during the one-year period, the offender does not satisfactorily comply with the conditions of the suspension, the sentence shall be reimposed, and the offender shall spend that portion of such offender's sentence that was suspended in the county jail.

(b) **[Formerly 42-4-1301 (9) (f) (II)]** In the case of any person who is sentenced pursuant to the provisions of ~~subparagraph (I) of paragraph (a) or subparagraph (I) of paragraph (b) of this subsection (9)~~ SECTION 42-4-1301 (7) (a) (I) OR (7) (b) (I), the court may suspend the mandatory minimum of any sentence of imprisonment if, as a condition thereof, the offender has a presentence or postsentence alcohol and drug evaluation and satisfactorily completes and meets all financial obligations of a level I or level II program as is determined appropriate by the alcohol and drug evaluation required pursuant to ~~subsection (10) of~~ this section.

(3) **[Formerly 42-4-1301 (10) (a), (10) (b), and (10) (c)]** (a) The judicial department shall administer in each judicial district an alcohol and drug driving safety program that provides presentence and postsentence alcohol and drug evaluations on

all persons convicted of a violation of ~~subsection (1) or (2) of this~~ section 42-4-1301. The alcohol and drug driving safety program shall further provide supervision and monitoring of all such persons whose sentences or terms of probation require completion of a program of alcohol and drug driving safety education or treatment.

(b) The presentence and postsentence alcohol and drug evaluations shall be conducted by such persons determined by the judicial department to be qualified to provide evaluation and supervision services as described in ~~paragraph (c) of this subsection (10)~~ THIS SECTION.

(c) (I) An alcohol and drug evaluation shall be conducted on all persons convicted of a violation of ~~subsection (1) or (2) of this~~ section 42-4-1301, and a copy of the report of the evaluation shall be provided to such person. The report shall be made available to and shall be considered by the court prior to sentencing unless the court proceeds to immediate sentencing pursuant to the provisions of ~~paragraph (e) of~~ subsection ~~(9)~~ (1) of this section.

(II) The report shall contain the defendant's prior traffic record, characteristics and history of alcohol or drug problems, and amenability to rehabilitation. The report shall include a recommendation as to alcohol and drug driving safety education or treatment for the defendant.

(III) The alcohol evaluation shall be conducted and the report prepared by a person who is trained and knowledgeable in the diagnosis of chemical dependency. Such person's duties may also include appearing at sentencing and probation hearings as required, referring defendants to education and treatment agencies in accordance with orders of the court, monitoring defendants in education and treatment programs, notifying the probation department and the court of any defendant failing to meet the conditions of probation or referral to education or treatment, appearing at revocation hearings as required, and providing assistance in data reporting and program evaluation.

(IV) For the purpose of this ~~subsection (10)~~ SECTION, "alcohol and drug driving safety education or treatment" means either level I or level II education or treatment programs that are approved by the division of alcohol and drug abuse. Level I programs are to be short-term, didactic education programs. Level II programs are to be therapeutically-oriented education, long-term outpatient, and comprehensive residential programs. Any defendant sentenced to level I or level II programs shall be instructed by the court to meet all financial obligations of such programs. If such financial obligations are not met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant's sentence. Nothing in this section shall prohibit treatment agencies from applying to the state for funds to recover the costs of level II treatment for defendants determined to be indigent by the court.

(4) (a) **[Formerly 42-4-1301 (10) (d)]** There is hereby created an alcohol and drug driving safety program fund in the office of the state treasurer to the credit of which shall be deposited all moneys as directed by this paragraph (a). ~~In addition to any fines, fees, or costs levied against a person convicted of a violation of subsection (1) or (2) of this section, the judge shall assess each such person for the cost of the presentence or postsentence alcohol and drug evaluation and supervision services.~~

The assessment in effect on July 1, 1998, shall remain in effect unless the judicial department and the division of alcohol and drug abuse have provided to the general assembly a statement of the cost of the program, including costs of administration for the past and current fiscal year to include a proposed change in the assessment. The general assembly shall then consider the proposed new assessment and approve the amount to be assessed against each person during the following fiscal year in order to ensure that the alcohol and drug driving safety program established in this ~~subsection (10)~~ SECTION shall be financially self-supporting. Any adjustment in the amount to be assessed shall be so noted in the appropriation to the judicial department and the division of alcohol and drug abuse as a footnote or line item related to this program in the general appropriation bill. The state auditor shall periodically audit the costs of the programs to determine that they are reasonable and that the rate charged is accurate based on these costs. Any other fines, fees, or costs levied against such person shall not be part of the program fund. The amount assessed for the alcohol and drug evaluation shall be transmitted by the court to the state treasurer to be credited to the alcohol and drug driving safety program fund. Fees charged under sections 25-1-306 (1), C.R.S., and 25-1-1102 (1), C.R.S., to approved alcohol and drug treatment facilities that provide level I and level II programs as provided in paragraph (c) of ~~this subsection (10)~~ SUBSECTION (3) OF THIS SECTION shall be transmitted to the state treasurer, who shall credit the fees to the alcohol and drug driving safety program fund. Upon appropriation by the general assembly, these funds shall be expended by the judicial department and the division of alcohol and drug abuse for the administration of the alcohol and drug driving safety program. In administering the alcohol and drug driving safety program, the judicial department is authorized to contract with any agency for such services as the judicial department deems necessary. Moneys deposited in the alcohol and drug driving safety program fund shall remain in said fund to be used for the purposes set forth in this ~~subsection (10)~~ SECTION and shall not revert or transfer to the general fund except by further act of the general assembly.

(b) **[Formerly 42-4-1301 (10) (e)]** The judicial department shall ensure that qualified personnel are placed in the judicial districts. The judicial department and the division of alcohol and drug abuse shall jointly develop and maintain criteria for evaluation techniques, treatment referral, data reporting, and program evaluation.

(c) **[Formerly 42-4-1301 (10) (f)]** The alcohol and drug driving safety program shall cooperate in providing services to a defendant who resides in a judicial district other than the one in which the arrest was made. Alcohol and drug driving safety programs may cooperate in providing services to any defendant who resides at a location closer to another judicial district's program. The requirements of this ~~subsection (10)~~ SECTION shall not apply to persons who are not residents of Colorado at the time of sentencing.

(5) **[Formerly 42-4-1301 (10) (g)]** The provisions of this ~~subsection (10)~~ SECTION are also applicable to any defendant who receives a deferred prosecution in accordance with section 16-7-401, C.R.S., or who receives a deferred sentence in accordance with section 16-7-403, C.R.S., and the completion of any stipulated alcohol evaluation, level I or level II education program, or level I or level II treatment program to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

42-4-1301.4. Useful public service - definition - local programs - assessment of costs. (1) THIS SECTION APPLIES TO ANY PERSON CONVICTED OF A VIOLATION OF SECTION 42-4-1301 AND WHO IS ORDERED TO COMPLETE USEFUL PUBLIC SERVICE.

(2) (a) **[Formerly 42-4-1301 (9) (i) (I)]** For the purposes of this ~~subsection (9)~~ SECTION AND SECTION 42-4-1301, "useful public service" means any work ~~which~~ THAT is beneficial to the public and ~~which~~ involves a minimum of direct supervision or other public cost. "Useful public service" does not include any work ~~which~~ THAT would endanger the health or safety of any person convicted of a violation of any of the offenses specified in ~~subsection (1) or (2) of this~~ section 42-4-1301.

(b) **[Formerly 42-4-1301 (9) (i) (II) (A)]** The sentencing court, the probation department, the county sheriff, and the board of county commissioners shall cooperate in identifying suitable work assignments. An offender sentenced to such work assignment shall complete the same within the time established by the court.

(3) **[Formerly 42-4-1301 (9) (i) (II) (B)]** There may be established in the probation department of each judicial district in the state a useful public service program under the direction of the chief probation officer. It is the purpose of the useful public service program: To identify and seek the cooperation of governmental entities and political subdivisions thereof, as well as corporations organized not for profit, for the purpose of providing useful public service jobs; to interview and assign persons who have been ordered by the court to perform useful public service to suitable useful public service jobs; and to monitor compliance or noncompliance of such persons in performing useful public service assignments within the time established by the court.

(4) (a) **[Formerly 42-4-1301 (9) (i) (II) (C)]** Any general public liability insurance policy obtained pursuant to this ~~subsection (9)~~ SECTION shall be in a sum of not less than the current limit on government liability under the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S.

(b) **[Formerly 42-4-1301 (9) (i) (III)]** For the purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., "public employee" does not include any person who is sentenced pursuant to ~~this subsection (9)~~ SECTION 42-4-1301 to participate in any type of useful public service.

(c) **[Formerly 42-4-1301 (9) (i) (IV)]** No governmental entity shall be liable under the "Workers' Compensation Act of Colorado", articles 40 to 47 of title 8, C.R.S., or under the "Colorado Employment Security Act", articles 70 to 82 of title 8, C.R.S., for any benefits on account of any person who is sentenced pursuant to ~~this subsection (9)~~ SECTION 42-4-1301 to participate in any type of useful public service, but nothing in this ~~subparagraph (IV)~~ PARAGRAPH (c) shall prohibit a governmental entity from electing to accept the provisions of the "Workers' Compensation Act of Colorado" by purchasing and keeping in force a policy of workers' compensation insurance covering such person.

(5) **[Formerly 42-4-1301 (9) (i) (V)]** ~~On and after July 1, 1984,~~ IN ACCORDANCE WITH SECTION 42-4-1301 (7) (h), in addition to any other penalties prescribed in this ~~subsection (9)~~ PART 13, the court shall assess an amount, not to exceed sixty dollars, upon any person required to perform useful public service. Such amount shall be

used by the operating agency responsible for overseeing such person's useful public service program to pay the cost of administration of the program, a general public liability policy covering such person, and, if such person will be covered by workers' compensation insurance pursuant to ~~subparagraph (IV) of this~~ paragraph ~~(i)~~ (c) OF SUBSECTION (4) OF THIS SECTION or an insurance policy providing such or similar coverage, the cost of purchasing and keeping in force such insurance coverage. Such amount shall be adjusted from time to time by the general assembly in order to insure that the useful public service program established in this ~~subsection (9)~~ SECTION shall be financially self-supporting. The proceeds from such amounts shall be used by the operating agency only for defraying the cost of personal services and other operating expenses related to the administration of the program and the cost of purchasing and keeping in force policies of general public liability insurance, workers' compensation insurance, or insurance providing such or similar coverage and shall not be used by the operating agency for any other purpose.

(6) **[Formerly 42-4-1301 (9) (c)]** The provisions of this ~~subsection (9)~~ SECTION relating to the performance of useful public service are also applicable to any defendant who receives a deferred prosecution in accordance with section 16-7-401, C.R.S., or who receives a deferred sentence in accordance with section 16-7-403, C.R.S., and the completion of any stipulated amount of useful public service hours to be completed by the defendant shall be ordered by the court in accordance with the conditions of such deferred prosecution or deferred sentence as stipulated to by the prosecution and the defendant.

SECTION 4. 18-3-106 (4) (g), Colorado Revised Statutes, is amended to read:

18-3-106. Vehicular homicide. (4) (g) Notwithstanding any provision in section ~~42-4-1301 (7)~~ 42-4-1301.1, C.R.S., concerning requirements which relate to the manner in which tests are administered, the test or tests taken pursuant to the provisions of this section may be used for the purposes of driver's license revocation proceedings under section 42-2-126, C.R.S., and for the purposes of prosecutions for violations of section 42-4-1301 (1) or (2), C.R.S.

SECTION 5. 18-3-205 (4) (g), Colorado Revised Statutes, is amended to read:

18-3-205. Vehicular assault. (4) (g) Notwithstanding any provision in section ~~42-4-1301 (7)~~ 42-2-1301.1, C.R.S., concerning requirements which relate to the manner in which tests are administered, the test or tests taken pursuant to the provisions of this section may be used for the purposes of driver's license revocation proceedings under section 42-2-126, C.R.S., and for the purposes of prosecutions for violations of section 42-4-1301 (1) or (2), C.R.S.

SECTION 6. 42-2-126 (1) (a), (2) (a) (I.7), (2) (a) (II), (2) (a) (IV), (3) (a), (5) (a), (7) (c) (II), (7) (c) (III), (9) (c) (I), and (9) (c) (III), Colorado Revised Statutes, are amended to read:

42-2-126. Revocation of license based on administrative determination. (1) The purposes of this section are:

(a) To provide safety for all persons using the highways of this state by quickly revoking the driver's license of any person who has shown himself or herself to be a

safety hazard by driving with an excessive amount of alcohol in his or her body and any person who has refused to submit to an analysis as required by section ~~42-4-1301 (7)~~ 42-4-1301.1;

(2) (a) The department shall revoke the license of any person upon its determination that the person:

(I.7) Drove a vehicle in this state when such person was under twenty-one years of age and when the amount of alcohol, as shown by analysis of the person's breath, subject to section ~~42-4-1301 (7)~~ 42-4-1301.1, in such person's blood was at least 0.02 but not in excess of 0.05 grams of alcohol per one hundred milliliters of blood at the time of driving or within two hours after driving. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time of testing, the preponderance of the evidence must also establish that the minimum 0.02 breath alcohol content was reached as a result of alcohol consumed before the person stopped driving.

(II) Refused to take or to complete, or to cooperate in the completing of, any test or tests of the person's blood, breath, saliva, or urine as required by section ~~42-4-1301 (7)~~ 42-4-1301.1 (2), 18-3-106 (4), or 18-3-205 (4), C.R.S. ~~If a law enforcement officer requests a test under the provisions of section 42-4-1301 (7) (a) (II), the person must cooperate with the request such that the sample of blood or breath can be obtained within two hours of the person's driving.~~ **[Last sentence relocated to 42-4-1301.1 (2) (a) (II) and (2) (b) (II)]**

(IV) Drove a commercial motor vehicle in this state when such person was under twenty-one years of age and when the amount of alcohol in such person's blood, as shown by analysis of such person's breath, subject to section ~~42-4-1301 (7)~~ 42-4-1301.1, was at least 0.02 but less than 0.04 grams of alcohol per two hundred ten liters of breath at the time of driving or any time thereafter.

(3) (a) Whenever a law enforcement officer has probable cause to believe that a person has violated section 42-4-1301 (2) or whenever a person refuses to take or to complete, or to cooperate with the completing of any test or tests of such person's blood, breath, saliva, or urine as required by section ~~42-4-1301 (7)~~ 42-4-1301.1, the law enforcement officer having such probable cause or requesting such test or tests shall forward to the department an affidavit containing information relevant to legal issues and facts which must be considered by the department to legally determine if a person's driving privilege should be revoked as provided in subsection (2) of this section. The executive director of the department shall specify to law enforcement agencies the form of the affidavit, the types of information needed in the affidavit, and any additional documents or copies of documents needed by the department to make its determination in addition to the affidavit. The affidavit shall be dated, signed, and sworn to by the law enforcement officer under penalty of perjury, but need not be notarized or sworn to before any other person.

(5) (a) (I) Whenever a law enforcement officer requests a person to take any test or tests as required by section ~~42-4-1301 (7)~~ 42-4-1301.1 and such person refuses to take or to complete or to cooperate in the completing of such test or tests or whenever such test results are available to the law enforcement officer and such tests show an alcohol concentration of 0.10 or more grams of alcohol per one hundred

milliliters of blood as shown by analysis of such person's blood or 0.10 or more grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath if the person is twenty-one years of age or older or, subject to section ~~42-4-1301 (7)~~ 42-4-1301.1, at least 0.02 but not in excess of 0.05 grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath if the person is under twenty-one years of age and when the person who is tested or who refuses to take or to complete or to cooperate in the completing of any test or tests is still available to the law enforcement officer, the officer, acting on behalf of the department, shall serve the notice of revocation personally on such person.

(II) Whenever a law enforcement officer requests a person who is under twenty-one years of age to take any test or tests as required by section ~~42-4-1301 (7)~~ 42-4-1301.1 and such person refuses to take or to complete or to cooperate in the completing of such test or tests or whenever such test results are available to the law enforcement officer and such tests show an alcohol concentration in excess of 0.05 grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or in excess of 0.05 grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath and when the person who is tested or who refuses to take or to complete or to cooperate in the completing of any test or tests is still available to the law enforcement officer, the officer, acting on behalf of the department, shall serve the notice of revocation personally on such person.

(7) (c) (II) If the person was determined to be in violation of subparagraph (I) of paragraph (a) of subsection (2) of this section and the person had a blood alcohol level, as shown by analysis of such person's blood or breath, that 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; or if the person's driving record otherwise indicates a designation as a persistent drunk driver as defined in section 42-1-102 (68.5), the department shall require such person to complete a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section ~~42-4-1301 (10)~~ 42-4-1301.3 before driving privileges may be restored.

(III) If the total period of license restraint under this paragraph (c) is not sufficient to allow for the completion of level II alcohol and drug education and treatment, or the documentation of completion of such education and treatment is incomplete at the time of reinstatement, proof of current enrollment in a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section ~~42-4-1301 (10)~~ 42-4-1301.3, on a form approved by the department shall be filed with the department.

(9) (c) (I) Where a license is revoked under subparagraph (I), (I.5), or (I.7) of paragraph (a) of subsection (2) of this section, the sole issue at the hearing shall be whether, by a preponderance of the evidence, the person drove a vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.10 or more grams of alcohol per one hundred milliliters of blood or 0.10 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving if the person was twenty-one years of age or older at the time of driving the vehicle or, subject to section ~~42-4-1301 (7)~~ 42-4-1301.1, at least 0.02 but not in excess of 0.05 grams of alcohol per two hundred

ten liters of breath at the time of driving or within two hours after driving if the person was under twenty-one years of age at the time of driving the vehicle, or in excess of 0.05 grams of alcohol per one hundred milliliters of blood or in excess of 0.05 grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving if the person was under twenty-one years of age at the time of driving the vehicle. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time that testing occurred, the preponderance of the evidence must also establish that the minimum 0.10 blood or breath alcohol content required in subparagraph (I) of paragraph (a) of subsection (2) of this section, the minimum 0.05 blood or breath alcohol content required in subparagraph (I.5) of paragraph (a) of subsection (2) of this section, or the minimum 0.02 breath alcohol content required in subparagraph (I.7) of paragraph (a) of subsection (2) of this section was reached as a result of alcohol consumed before the person stopped driving; or, where a license is revoked under subparagraph (II) of paragraph (a) of subsection (2) of this section, whether the person refused to take or to complete or to cooperate in the completing of any test or tests of the person's blood, breath, saliva, or urine as required by section ~~42-4-1301 (7)~~ 42-4-1301.1. If the presiding hearing officer finds the affirmative of the issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(III) Where a license is revoked under subparagraph (III) or subparagraph (IV) of paragraph (a) of subsection (2) of this section, the sole issue at the hearing shall be whether, by a preponderance of the evidence, the person drove a commercial motor vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.04 or more grams of alcohol per one hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of driving or anytime thereafter for a person twenty-one years of age or older or, subject to section ~~42-4-1301 (7)~~ 42-4-1301.1, 0.02 but less than 0.04 grams of alcohol per two hundred ten liters of breath at the time of driving or anytime thereafter for a person under twenty-one years of age, or 0.04 or more grams of alcohol per one hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of driving or anytime thereafter for a person under twenty-one years of age, if the preponderance of the evidence establishes that such person did not consume any alcohol between the time of driving and the time of testing. If the presiding hearing officer finds the affirmative of the issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

SECTION 7. 42-2-132.5 (1) (a), Colorado Revised Statutes, is amended to read:

42-2-132.5. Mandatory and voluntary restricted licenses following alcohol conviction - repeal. (1) The following persons shall be required to hold a restricted license pursuant to this section for at least one year prior to being eligible to obtain any other driver's license issued under this article:

(a) Any person who has been convicted on two or more occasions of ~~an offense under section 42-4-1301 (1) (a) or (2) (a)~~ DUI OR DUI PER SE, AS DEFINED IN SECTION 42-4-1300.3, which offenses were committed within a period of five years and one of the offenses occurred on or after July 1, 1999, and on or before June 30, 2000;

SECTION 8. 16-11-501 (2) (j), Colorado Revised Statutes, is amended to read:

16-11-501. Judgment for costs and fines. (2) The costs assessed pursuant to subsection (1) of this section or section 16-18-101 may include:

(j) On proper motion of the prosecuting attorney and at the discretion of the court, any other reasonable and necessary costs incurred by the prosecuting attorney or law enforcement agency ~~which~~ THAT are directly the result of the prosecution of the defendant, including the costs resulting from the collection and analysis of any chemical test upon the defendant pursuant to section ~~42-4-1301~~ 42-4-1301.1, C.R.S., which costs shall be reimbursed by the defendant directly to the law enforcement agency ~~which~~ THAT performed such chemical tests;

SECTION 9. 16-11.5-103 (2), Colorado Revised Statutes, is amended to read:

16-11.5-103. Substance abuse assessment required - convicted felons - controlled substance offenders. (2) Each person convicted of a misdemeanor or petty offense pursuant to article 18 of title 18, C.R.S., committed on or after July 1, 1992, shall be required to submit to an alcohol and drug evaluation pursuant to section ~~42-4-1301~~ 42-4-1301.3, C.R.S. The court shall order such person to comply with the recommendations of such evaluation. If such person is sentenced to probation, such person shall be ordered to comply with the recommendations as a condition of probation at such person's own expense, unless such person is indigent. If such person is not sentenced to probation, such person shall be ordered to comply with the recommendations as a part of the sentence imposed at such person's own expense, unless such person is indigent.

SECTION 10. 24-1-120 (6) (d), Colorado Revised Statutes, is amended to read:

24-1-120. Department of human services - creation. (6) The department shall consist of the following divisions:

(d) The division of alcohol and drug abuse, created pursuant to part 1 of article 1 of title 25, C.R.S. The division of alcohol and drug abuse and its powers, duties, and functions, including the powers, duties, and functions relating to the alcohol and drug driving safety program specified in section ~~42-4-1301 (10)~~ 42-4-1301.3, C.R.S., are transferred by a **type 2** transfer to the department of human services.

SECTION 11. 25-1-306 (1), Colorado Revised Statutes, is amended to read:

25-1-306. Standards for public and private treatment facilities - fees - enforcement procedures - penalties. (1) In accordance with the provisions of this part 3, the division shall establish standards for approved treatment facilities that receive state funds. Such standards must be met for a treatment facility to be approved as a public or private treatment facility. The division shall fix the fees to be charged for the required inspections. The fees that are charged to approved treatment facilities that provide level I and level II programs as provided in section ~~42-4-1301 (10) (c)~~ 42-4-1301.3 (3) (c), C.R.S., shall be transmitted to the state treasurer, who shall credit the fees to the alcohol and drug driving safety program fund created in section ~~42-4-1301 (10) (d)~~ 42-4-1301.3 (4) (a), C.R.S. The standards may concern only the health standards to be met and standards of treatment to be

afforded patients and shall reflect the success criteria established by the general assembly.

SECTION 12. 25-1-1102 (1), Colorado Revised Statutes, is amended to read:

25-1-1102. Standards for public and private treatment facilities - fees - enforcement procedures - penalties. (1) In accordance with the provisions of this part 11, the division shall establish standards for approved treatment facilities that receive state funds. Such standards must be met for a treatment facility to be approved as a public or private treatment facility. The division shall fix the fees to be charged for the required inspections. The fees that are charged to approved treatment facilities that provide level I and level II programs as provided in section ~~42-4-1301 (10) (c)~~ 42-4-1301.3 (3) (c), C.R.S., shall be transmitted to the state treasurer, who shall credit the fees to the alcohol and drug driving safety program fund created in section ~~42-4-1301 (10) (d)~~ 42-4-1301.3 (4) (a), C.R.S. The standards may concern only the health standards to be met and standards of treatment to be afforded patients and shall reflect the success criteria established by the general assembly.

SECTION 13. 33-13-108.1 (12) (e) and (12) (f), Colorado Revised Statutes, are amended to read:

33-13-108.1. Operating a motorboat or sailboat while under the influence. (12) (e) For the purposes of this subsection (12), "useful public service" shall have the same meaning as that set forth in section ~~42-4-1301 (9) (i)~~ 42-4-1301.4 (2) (a), C.R.S., and the useful public service program authorized therein shall be utilized for the purposes of this subsection (12). An offender sentenced to such useful public service program or to such work assignments shall complete the same within the time established by the court. In addition to any other penalties, fines, fees, or costs prescribed in this section, the court shall assess an amount not to exceed the amount established in section ~~42-4-1301 (9) (i)~~ 42-4-1301.4, C.R.S., upon any person required to perform useful public service. Such amount shall be used only to pay for the costs authorized in section ~~42-4-1301 (9) (i)~~ 42-4-1301.4, C.R.S.

(f) For the purposes of this subsection (12), "alcohol and drug driving safety education or treatment" shall have the same meaning as that set forth in section ~~42-4-1301 (10)~~ 42-4-1301.3 (3) (c) (IV), C.R.S., and the alcohol and drug driving safety program and the presentence alcohol and drug evaluations authorized therein shall be utilized for the purposes of this subsection (12). The presentence alcohol and drug evaluation shall be conducted on all persons convicted of a violation of subsection (1) of this section; except that this requirement shall not apply to persons who are not residents of Colorado at the time of sentencing. Any defendant sentenced to level I or level II education or treatment programs shall be instructed by the court to meet all financial obligations of such programs. If such financial obligations are not met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant's sentence. In addition to any other penalties, fines, fees, or costs prescribed in this section, the court shall assess an amount, not to exceed the amount established in section ~~42-4-1301 (10)~~ 42-4-1301.3, C.R.S., upon any person convicted of a violation of subsection (1) of this section. Such amount shall be used only to pay for the costs authorized in section ~~42-4-1301 (10)~~ 42-4-1301.3, C.R.S. The court shall consider the alcohol and drug evaluation prior

to sentencing. The provisions of this paragraph (f) are also applicable to any defendant who receives a deferred prosecution in accordance with section 16-7-401, C.R.S., or who receives a deferred sentence in accordance with section 16-7-403, C.R.S.

SECTION 14. 41-2-102 (7) (h) and (8), Colorado Revised Statutes, are amended to read:

41-2-102. Operating an aircraft under the influence - operating an aircraft with excessive alcoholic content - tests - penalties - useful public service program. (7) (h) The provisions of section ~~42-4-1301 (9) (i)~~ 42-4-1301.4, C.R.S., shall apply to this article.

(8) The division of alcohol and drug abuse in the department of human services shall provide presentence alcohol and drug evaluations on all persons convicted of a violation of subsection (1) or (2) of this section, in the same manner as described in section ~~42-4-1301 (10)~~ 42-4-1301.3, C.R.S.

SECTION 15. 42-1-217 (1) (c), Colorado Revised Statutes, is amended to read:

42-1-217. Disposition of fines and surcharges. (1) All judges, clerks of a court of record, or other officers imposing or receiving fines, penalties, or forfeitures, except those moneys received pursuant to sections 42-4-313 (3), 42-4-413, 42-4-1701 (5) (a), 42-8-105, and 42-8-106, collected pursuant to or as a result of a conviction of any persons for a violation of any of the provisions of articles 1 to 4 (except part 3 of article 2) of this title, shall transmit, within ten days from the date of receipt of any such fine, penalty, or forfeiture, all such moneys so collected in the following manner:

(c) Any other provision of law notwithstanding, all moneys collected pursuant to section ~~42-4-1301 (10)~~ 42-1-1301.3 shall be transmitted to the state treasurer to be credited to the account of the alcohol and drug driving safety program fund.

SECTION 16. 42-2-122 (1) (i), Colorado Revised Statutes, is amended to read:

42-2-122. Department may cancel license - limited license for physical or mental limitations. (1) The department has the authority to cancel, deny, or deny the reissuance of any driver's or minor driver's license upon determining that the licensee was not entitled to the issuance thereof for any of the following reasons:

(i) Failure of the person to complete a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section ~~42-4-1301 (10)~~ 42-4-1301.3, as required by section 42-2-126 (7) or 42-2-132 (2) (a) (II). Such failure shall be documented pursuant to section 42-2-144.

SECTION 17. 42-2-125 (1) (i), Colorado Revised Statutes, is amended to read:

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:

(i) Been convicted of any offense provided for in section 42-4-1301 (1) or (2) (a) and has two previous convictions of any of such offenses. The license of any driver shall be revoked for an indefinite period and shall only be reissued upon proof to the department that said driver has completed a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section ~~42-4-1301 (10)~~ 42-4-1301.3 and that said driver has demonstrated knowledge of the laws and driving ability through the regular motor vehicle testing process. In no event shall such license be reissued in less than two years.

SECTION 18. 42-2-132 (2) (a) (II) and (2) (a) (III), Colorado Revised Statutes, are amended to read:

42-2-132. Period of suspension or revocation. (2) (a) (II) (A) Following the period of revocation set forth in this subsection (2), the department shall not issue a new license unless and until it is satisfied that such person has demonstrated knowledge of the laws and driving ability through the appropriate motor vehicle testing process and that such person whose license was revoked pursuant to section 42-2-125 for an alcohol- or drug-related driving offense has completed not less than a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section ~~42-4-1301 (10)~~ 42-4-1301.3.

(B) If the person was determined to be in violation of section 42-2-126 (2) (a) (I) and the person had a blood alcohol level, as shown by analysis of such person's blood or breath, that 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; or if the person's driving record otherwise indicates a designation as a persistent drunk driver as defined in section 42-1-102 (68.5), the department shall require such person to complete a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section ~~42-4-1301 (10)~~ 42-4-1301.3.

(C) If the total period of license restraint under this subparagraph (II) is not sufficient to allow for the completion of level II alcohol and drug education and treatment, or the documentation of completion of such education and treatment is incomplete at the time of reinstatement, proof of current enrollment in a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section ~~42-4-1301 (10)~~ 42-4-1301.3, on a form approved by the department shall be filed with the department.

(III) In the case of a minor driver or a provisional driver whose license has been revoked as a result of one conviction for any offense provided for in section 42-4-1301 (1) or (2), the minor driver or provisional driver, unless otherwise required after an evaluation made by an alcohol and drug evaluation specialist certified by the division of alcohol and drug abuse, must complete a level I alcohol and drug education program certified by the division of alcohol and drug abuse pursuant to section ~~42-4-1301 (10)~~ 42-4-1301.3.

SECTION 19. 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 drug education and treatment programs certified by the division of alcohol and drug abuse pursuant to section ~~42-4-1301 (10)~~ 42-4-1301.3 to provide quarterly reports to the department about each person who is enrolled and who has filed proof of such enrollment with the department as required by section 42-2-126 (7) (c) (III).

SECTION 20. 42-3-130.5, Colorado Revised Statutes, is amended to read:

42-3-130.5. Persistent drunk driver cash fund - programs to deter persistent drunk drivers. There is hereby created in the state treasury the persistent drunk driver cash fund, which shall be composed of moneys collected for penalty surcharges under section 42-4-1301 ~~(9) (g) (II)~~ (7) (d) (II). The moneys in such fund are subject to annual appropriation by the general assembly to pay the costs incurred by the department regarding persistent drunk drivers under the provisions of sections 42-2-126 (2.5) and 42-7-406 (1.5), to pay for costs incurred by the department for computer programing changes related to treatment compliance for persistent drunk drivers pursuant to section 42-2-144, and to support programs that are intended to deter persistent drunk driving or intended to educate the public, with particular emphasis on the education of young drivers, regarding the dangers of persistent drunk driving. The departments of transportation, revenue, and human services shall coordinate programs intended to accomplish such goals.

SECTION 21. The introductory portion to 42-4-1701 (3) (a) (II) (A), Colorado Revised Statutes, is amended to read:

42-4-1701. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule. (3) (a) (II) (A) Except as provided in subsections (4) and (5) of this section and in ~~section~~ SECTIONS 42-4-1301 ~~(9)~~ (7), 42-4-1301.2 (2), 42-4-1301.3, AND 42-4-1301.4, misdemeanor traffic offenses are divided into two classes which are distinguished from one another by the following penalties which are authorized upon conviction:

SECTION 22. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 23. Effective date - applicability. This act shall take effect July 1, 2002, and shall apply to offenses committed on or after said date.

SECTION 24. 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