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An Act

HOUSE BILL 11-1268

BY REPRESENTATIVE(S) Levy, Fields, Fischer, Labuda, Pace, Ryden, Schafer S., Solano, Todd, Vigil, Wilson;
also SENATOR(S) Nicholson, Giron, Guzman, Heath, Morse, Newell, Steadman.

CONCERNING PENALTIES FOR TRAFFIC OFFENSES INVOLVING ALCOHOL AND DRUGS.

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

SECTION 1. 42-4-1301.3 (1) and (2), Colorado Revised Statutes, are amended to read:

42-4-1301.3. Alcohol and drug driving safety program.

(1) (a) Upon conviction of a violation of section 42-4-1301, the court shall sentence the defendant in accordance with the provisions of this section and other applicable provisions of this part 13. The court shall consider the alcohol and drug evaluation required pursuant to this section prior to sentencing; except that the court may proceed to immediate sentencing without considering such alcohol and drug evaluation:

(I) (A) If the defendant has no prior convictions or pending charges under this section; OR

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

(B) IF THE DEFENDANT HAS ONE OR MORE PRIOR CONVICTIONS, THE PROSECUTING ATTORNEY AND THE DEFENDANT HAVE STIPULATED TO SUCH CONVICTION OR CONVICTIONS; and

(II) IF neither the defendant nor the prosecuting attorney objects.

(b) If the court proceeds to immediate sentencing, without considering ~~such~~ AN alcohol and drug evaluation, ~~such~~ THE 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~~ THE alcohol and drug evaluation. If the defendant disagrees with the education and treatment program recommended in ~~such~~ THE 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) (I) The sentence of any person subject to the provisions of section 42-4-1307 may be suspended to the extent provided for in said section if the offender:~~

~~(A) 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.~~

~~(H) 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) In the case of any person who is sentenced pursuant to the provisions of 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 this section.~~

SECTION 2. 42-4-1307 (1) (b), (3) (a) (I), (3) (a) (II), (4) (a) (I), (4) (a) (II), (5) (a) (II), (6) (a) (II), (7) (b) (II), and (11), Colorado Revised Statutes, are amended to read:

42-4-1307. Penalties for traffic offenses involving alcohol and drugs - repeal. (1) **Legislative declaration.** The general assembly hereby finds and declares that, for the purposes of sentencing as described in section 18-1-102.5, C.R.S., each sentence for a conviction of a violation of section 42-4-1301 shall include:

(b) FOR A SECOND OR SUBSEQUENT OFFENDER, a period of probation. THE IMPOSITION OF A PERIOD OF PROBATION UPON THE CONVICTION OF A FIRST-TIME OFFENDER SHALL BE SUBJECT TO THE COURT'S DISCRETION AS DESCRIBED IN PARAGRAPH (c) OF SUBSECTION (3) AND PARAGRAPH (c) OF SUBSECTION (4) OF THIS SECTION. The purpose of probation is to help the offender change his or her behavior to reduce the risk of future violations of section 42-4-1301. If a court imposes imprisonment as a penalty for a violation of a condition of his or her probation, the penalty shall constitute a separate period of imprisonment that the offender shall serve in addition to the imprisonment component of his or her original sentence.

(3) **First offenses - DUI, DUI per se, and habitual user.**
(a) Except as otherwise provided in subsections (5) and (6) of this section, a person who is convicted of DUI, DUI per se, or habitual user shall be punished by:

(I) Imprisonment in the county jail for at least five days but no more than one year, the minimum period of which shall be mandatory; ~~except as otherwise provided in~~ THAT THE COURT MAY SUSPEND THE MANDATORY MINIMUM PERIOD IF, AS A CONDITION OF THE SUSPENDED SENTENCE, THE OFFENDER UNDERGOES 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 TO BE APPROPRIATE BY THE ALCOHOL AND DRUG EVALUATION THAT IS REQUIRED PURSUANT TO section 42-4-1301.3;

(II) A fine of at least six hundred dollars but no more than one thousand dollars, AND THE COURT SHALL HAVE DISCRETION TO SUSPEND THE FINE; and

(4) **First offenses - DWAI.** (a) Except as otherwise provided in subsections (5) and (6) of this section, a person who is convicted of DWAI shall be punished by:

(I) Imprisonment in the county jail for at least two days but no more than one hundred eighty days, the minimum period of which shall be mandatory; ~~except as provided in~~ THAT THE COURT MAY SUSPEND THE MANDATORY MINIMUM PERIOD IF, AS A CONDITION OF THE SUSPENDED SENTENCE, THE OFFENDER UNDERGOES 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 TO BE APPROPRIATE BY THE ALCOHOL AND DRUG EVALUATION THAT IS REQUIRED PURSUANT TO section 42-4-1301.3; and

(II) A fine of at least two hundred dollars but no more than five hundred dollars, AND THE COURT SHALL HAVE DISCRETION TO SUSPEND THE FINE; and

(5) **Second offenses.** (a) Except as otherwise provided in subsection (6) of this section, a person who is convicted of DUI, DUI per se, DWAI, or habitual user who, at the time of sentencing, has a prior conviction of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d), shall be punished by:

(II) A fine of at least six hundred dollars but no more than one thousand five hundred dollars, AND THE COURT SHALL HAVE DISCRETION TO SUSPEND THE FINE;

(6) **Third and subsequent offenses.** (a) A person who is convicted of DUI, DUI per se, DWAI, or habitual user who, at the time of sentencing, has two or more prior convictions of DUI, DUI per se, DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S.,

vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's license was under restraint pursuant to section 42-2-138 (1) (d) shall be punished by:

(II) A fine of at least six hundred dollars but no more than one thousand five hundred dollars, AND THE COURT SHALL HAVE DISCRETION TO SUSPEND THE FINE;

(7) **Probation-related penalties.** When a person is sentenced to a period of probation pursuant to subparagraph (IV) of paragraph (a) of subsection (5) of this section or subparagraph (IV) of paragraph (a) of subsection (6) of this section:

(b) The court:

(II) May impose an additional period of probation for the purpose of monitoring the person or ensuring that the person continues to receive court-ordered alcohol or substance abuse treatment, which additional period shall not exceed two years; ~~as described in subsection (11) of this section;~~

(11) **Restitution.** ~~In addition to any other penalty provided by law, a court may sentence a person who is twice or more convicted of DUI, DUI per se, DWAI, habitual user, or UDD to a period of probation not to exceed two additional years to monitor the person's compliance with court orders.~~ As a condition of any sentence to probation IMPOSED PURSUANT TO THIS SECTION, the SENTENCED person shall be required to make restitution in accordance with the provisions of section 18-1.3-205, C.R.S.

SECTION 3. 42-4-1301.4 (5), Colorado Revised Statutes, is amended to read:

42-4-1301.4. Useful public service - definitions - local programs - assessment of costs. (5) In accordance with ~~section 42-4-1301 (7) (h)~~ SECTION 42-4-1307 (14), in addition to any other penalties prescribed in this part 13, the court shall assess an amount, not to exceed one hundred twenty 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 paragraph (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 ensure that the useful public service program established in this 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.

SECTION 4. 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 - repeal. (3) (a) (II) (A) Except as otherwise provided in sub-subparagraph (B) of this subparagraph (II), subsections (4) and (5) of this section, and sections ~~42-4-1301 (7)~~, 42-4-1301.3, ~~and~~ 42-4-1301.4, AND 42-4-1307, or the section creating the offense, misdemeanor traffic offenses are divided into two classes that are distinguished from one another by the following penalties that are authorized upon conviction:

Class	Minimum Sentence	Maximum Sentence
1	Ten days imprisonment, or \$300 fine, or both	One year imprisonment, or \$1,000 fine, or both
2	Ten days imprisonment, or \$150 fine, or both	Ninety days imprisonment, or \$300 fine, or both

SECTION 5. The introductory portion to 42-3-303 (1), Colorado Revised Statutes, is amended to read:

42-3-303. Persistent drunk driver cash fund - programs to deter persistent drunk drivers. (1) 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 (7) (d) (II)~~

SECTION 42-4-1307 (10) (b). The moneys in such fund are subject to annual appropriation by the general assembly:

SECTION 6. 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.

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO