

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 11-0809.01 Richard Sweetman

HOUSE BILL 11-1268

HOUSE SPONSORSHIP

Levy,

SENATE SPONSORSHIP

Nicholson,

House Committees
Judiciary

Senate Committees
Judiciary

A BILL FOR AN ACT

101 **CONCERNING PENALTIES FOR TRAFFIC OFFENSES INVOLVING ALCOHOL**
102 **AND DRUGS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill clarifies that, upon a conviction of a traffic offense involving alcohol or drugs where the offender has one or more prior such convictions, the court may proceed to immediate sentencing without considering the statutorily required alcohol and drug evaluation if the prosecuting attorney and the defendant have stipulated to the convictions.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
Am ended 2nd Reading
May 9, 2011

HOUSE
3rd Reading Unam ended
March 24, 2011

HOUSE
Am ended 2nd Reading
March 22, 2011

The bill clarifies that when a person is convicted of a first-time DUI, DUI per se, DWAI, or habitual user offense, the court may suspend the mandatory minimum period of the imprisonment portion of the offender's sentence 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 statutorily required alcohol and drug evaluation.

The bill clarifies the probation portion of the statutorily prescribed sentences for a traffic offense involving alcohol or drugs.

The bill makes conforming amendments.

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

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

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

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

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

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

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

17 (b) If the court proceeds to immediate sentencing, without
18 considering ~~such~~ AN alcohol and drug evaluation, ~~such~~ THE alcohol and
19 drug evaluation shall be conducted after sentencing, and the court shall

1 order the defendant to complete the education and treatment program
2 recommended in ~~such~~ THE alcohol and drug evaluation. If the defendant
3 disagrees with the education and treatment program recommended in ~~such~~
4 THE alcohol and drug evaluation, the defendant may request the court to
5 hold a hearing to determine which education and treatment program
6 should be completed by the defendant.

7 (2) (a) (I) ~~The sentence of any person subject to the provisions of~~
8 ~~section 42-4-1307 may be suspended to the extent provided for in said~~
9 ~~section if the offender:~~

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

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

14 (C) ~~Abstains from the use of alcohol for a period of one year from~~
15 ~~the date of sentencing. Such abstinence shall be monitored by the~~
16 ~~treatment facility by the administration of disulfiram or by any other~~
17 ~~means that the director of the treatment facility deems appropriate.~~

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

22 (b) ~~In the case of any person who is sentenced pursuant to the~~
23 ~~provisions of section 42-4-1301 (7) (a) (I) or (7) (b) (I), the court may~~
24 ~~suspend the mandatory minimum of any sentence of imprisonment if, as~~
25 ~~a condition thereof, the offender has a presentence or postsentence~~
26 ~~alcohol and drug evaluation and satisfactorily completes and meets all~~
27 ~~financial obligations of a level I or level II program as is determined~~

1 appropriate by the alcohol and drug evaluation required pursuant to this
2 section:

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

6 **42-4-1307. Penalties for traffic offenses involving alcohol and**
7 **drugs - repeal.** (1) **Legislative declaration.** The general assembly
8 hereby finds and declares that, for the purposes of sentencing as described
9 in section 18-1-102.5, C.R.S., each sentence for a conviction of a
10 violation of section 42-4-1301 shall include:

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

22 (3) **First offenses - DUI, DUI per se, and habitual user.**

23 (a) Except as otherwise provided in subsections (5) and (6) of this
24 section, a person who is convicted of DUI, DUI per se, or habitual user
25 shall be punished by:

26 (I) Imprisonment in the county jail for at least five days but no
27 more than one year, the minimum period of which shall be mandatory

1 except ~~as otherwise provided in~~ THAT, THE COURT MAY SUSPEND THE
2 MANDATORY MINIMUM PERIOD IF, AS A CONDITION OF THE SUSPENDED
3 SENTENCE, THE OFFENDER UNDERGOES A PRESENTENCE OR POSTSENTENCE
4 ALCOHOL AND DRUG EVALUATION AND SATISFACTORILY COMPLETES AND
5 MEETS ALL FINANCIAL OBLIGATIONS OF A LEVEL I OR LEVEL II PROGRAM
6 AS IS DETERMINED TO BE APPROPRIATE BY THE ALCOHOL AND DRUG
7 EVALUATION THAT IS REQUIRED PURSUANT TO section 42-4-1301.3;

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

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

14 (I) Imprisonment in the county jail for at least two days but no
15 more than one hundred eighty days, the minimum period of which shall
16 be mandatory; ~~except as provided in~~ THAT THE COURT MAY SUSPEND THE
17 MANDATORY MINIMUM PERIOD IF, AS A CONDITION OF THE SUSPENDED
18 SENTENCE, THE OFFENDER UNDERGOES A PRESENTENCE OR POSTSENTENCE
19 ALCOHOL AND DRUG EVALUATION AND SATISFACTORILY COMPLETES AND
20 MEETS ALL FINANCIAL OBLIGATIONS OF A LEVEL I OR LEVEL II PROGRAM
21 AS IS DETERMINED TO BE APPROPRIATE BY THE ALCOHOL AND DRUG
22 EVALUATION THAT IS REQUIRED PURSUANT TO section 42-4-1301.3; and

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

26 (5) **Second offenses.** (a) Except as otherwise provided in
27 subsection (6) of this section, a person who is convicted of DUI, DUI per

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

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

11 (6) **Third and subsequent offenses.** (a) A person who is
12 convicted of DUI, DUI per se, DWAI, or habitual user who, at the time
13 of sentencing, has two or more prior convictions of DUI, DUI per se,
14 DWAI, habitual user, vehicular homicide pursuant to section 18-3-106 (1)
15 (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S.,
16 aggravated driving with a revoked license pursuant to section 42-2-206
17 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's
18 license was under restraint pursuant to section 42-2-138 (1) (d) shall be
19 punished by:

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

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

27 (b) The court:

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

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

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

16 **42-4-1301.4. Useful public service - definitions - local**
17 **programs - assessment of costs.** (5) In accordance with ~~section~~
18 ~~42-4-1301 (7) (h)~~ SECTION 42-4-1307 (14), in addition to any other
19 penalties prescribed in this part 13, the court shall assess an amount, not
20 to exceed one hundred twenty dollars, upon any person required to
21 perform useful public service. Such amount shall be used by the
22 operating agency responsible for overseeing such person's useful public
23 service program to pay the cost of administration of the program, a
24 general public liability policy covering such person, and, if such person
25 will be covered by workers' compensation insurance pursuant to
26 paragraph (c) of subsection (4) of this section or an insurance policy
27 providing such or similar coverage, the cost of purchasing and keeping in

1 force such insurance coverage. Such amount shall be adjusted from time
 2 to time by the general assembly in order to ensure that the useful public
 3 service program established in this section shall be financially
 4 self-supporting. The proceeds from such amounts shall be used by the
 5 operating agency only for defraying the cost of personal services and
 6 other operating expenses related to the administration of the program and
 7 the cost of purchasing and keeping in force policies of general public
 8 liability insurance, workers' compensation insurance, or insurance
 9 providing such or similar coverage and shall not be used by the operating
 10 agency for any other purpose.

11 **SECTION 4.** 42-4-1701 (3) (a) (II) (A), Colorado Revised
 12 Statutes, is amended to read:

13 **42-4-1701. Traffic offenses and infractions classified -**
 14 **penalties - penalty and surcharge schedule - repeal.**

15 (3) (a) (II) (A) Except as otherwise provided in sub-subparagraph (B) of
 16 this subparagraph (II), subsections (4) and (5) of this section, and sections
 17 ~~42-4-1301 (7)~~, 42-4-1301.3, ~~and~~ 42-4-1301.4, AND 42-4-1307, or the
 18 section creating the offense, misdemeanor traffic offenses are divided into
 19 two classes that are distinguished from one another by the following
 20 penalties that are authorized upon conviction:

21	Class	Minimum	Maximum
22		Sentence	Sentence
23	1	Ten days imprisonment,	One year imprisonment,
24		or \$300 fine, or both	or \$1,000 fine, or both
25	2	Ten days imprisonment,	Ninety days imprisonment,
26		or \$150 fine, or both	or \$300 fine, or both

27 **SECTION 5.** The introductory portion to 42-3-303 (1), Colorado

1 Revised Statutes, is amended to read:

2 **42-3-303. Persistent drunk driver cash fund - programs to**
3 **deter persistent drunk drivers.** (1) There is hereby created in the state
4 treasury the persistent drunk driver cash fund, which shall be composed
5 of moneys collected for penalty surcharges under ~~section 42-4-1301 (7)~~
6 ~~(d)(H)~~ SECTION 42-4-1307 (10) (b). The moneys in such fund are subject
7 to annual appropriation by the general assembly:

8 SECTION 6. 13-21-102.5 (2), (3) (a), and (3) (b), Colorado
9 Revised Statutes, are amended, and the said 13-21-102.5 is further
10 amended BY THE ADDITION OF A NEW SUBSECTION, to read:

11 **13-21-102.5. Limitations on damages for noneconomic loss or**
12 **injury.** (2) As used in this section:

13 (a) "ALCOHOL-RELATED OR DRUG-RELATED DRIVING INCIDENT"
14 MEANS AN INCIDENT IN WHICH A PERSON WHO IS DRIVING UNDER THE
15 INFLUENCE OF ALCOHOL OR ONE OR MORE DRUGS, AS DESCRIBED IN
16 SECTION 42-4-1307 (2) (b), C.R.S., OR DRIVING WHILE HIS OR HER ABILITY
17 IS IMPAIRED, AS DESCRIBED IN SECTION 42-4-1307 (2) (c), C.R.S., CAUSES
18 A LOSS OR INJURY TO ANOTHER PERSON.

19 (a) (b) "Derivative noneconomic loss or injury" means
20 nonpecuniary harm or emotional stress to persons other than the person
21 suffering the direct or primary loss or injury.

22 (b) (c) "Noneconomic loss or injury" means nonpecuniary harm
23 for which damages are recoverable by the person suffering the direct or
24 primary loss or injury, including pain and suffering, inconvenience,
25 emotional stress, and impairment of the quality of life. "Noneconomic
26 loss or injury" includes a damage recovery for nonpecuniary harm for
27 actions brought under section 13-21-201 or 13-21-202.

1 (3) (a) In any civil action other than EXCEPT FOR medical
2 malpractice actions AND ACTIONS CONCERNING DAMAGES RESULTING
3 FROM ALCOHOL-RELATED OR DRUG-RELATED DRIVING INCIDENTS, IN ANY
4 CIVIL ACTION in which damages for noneconomic loss or injury may be
5 awarded, the total of such damages shall not exceed the sum of two
6 hundred fifty thousand dollars, unless the court finds justification by clear
7 and convincing evidence therefor. In no case EXCEPT FOR ACTIONS
8 CONCERNING DAMAGES RESULTING FROM ALCOHOL-RELATED OR
9 DRUG-RELATED DRIVING INCIDENTS shall the amount of noneconomic loss
10 or injury damages exceed five hundred thousand dollars. The damages
11 for noneconomic loss or injury in a medical malpractice action shall not
12 exceed the limitations on noneconomic loss or injury specified in section
13 13-64-302.

14 (b) In any civil action OTHER THAN AN ACTION CONCERNING
15 DAMAGES RESULTING FROM AN ALCOHOL-RELATED OR DRUG-RELATED
16 DRIVING INCIDENT, no damages for derivative noneconomic loss or injury
17 may be awarded unless the court finds justification by clear and
18 convincing evidence therefor. In no case shall the amount of such
19 damages exceed two hundred fifty thousand dollars.

20 (7) NOTWITHSTANDING THE PROVISIONS OF SECTION 42-4-1713,
21 C.R.S., A RECORD OF THE CONVICTION OF ANY DEFENDANT, INCLUDING A
22 PLEA OF GUILTY OR NOLO CONTENDERE, FOR ANY ALCOHOL-RELATED OR
23 DRUG-RELATED TRAFFIC VIOLATION DESCRIBED IN PART 13 OF ARTICLE 4
24 OF TITLE 42, C.R.S., SHALL BE ADMISSIBLE IN ANY COURT IN ANY CIVIL
25 ACTION SEEKING NONECONOMIC DAMAGES CAUSED BY AN
26 ALCOHOL-RELATED OR DRUG-RELATED DRIVING INCIDENT AS PRIMA FACIE
27 EVIDENCE THAT THE DRIVER WAS DRIVING UNDER THE INFLUENCE OF

1 ALCOHOL OR DRUGS OR DRIVING WHILE HIS OR HER ABILITY WAS IMPAIRED
2 BY ALCOHOL OR DRUGS.

3 SECTION 7. 13-20-806 (4) (a), Colorado Revised Statutes, is
4 amended to read:

5 13-20-806. Limitation of damages. (4) (a) In an action asserting
6 personal injury or bodily injury as a result of a construction defect in
7 which damages for noneconomic loss or injury or derivative noneconomic
8 loss or injury may be awarded, such damages shall not exceed the sum of
9 two hundred fifty thousand dollars. As used in this subsection (4),
10 "noneconomic loss or injury" has the same meaning as set forth in section
11 ~~13-21-102.5 (2) (b)~~ SECTION 13-21-102.5 (2) (c), and "derivative
12 noneconomic loss or injury" has the same meaning as set forth in section
13 ~~13-21-102.5 (2) (a)~~ SECTION 13-21-102.5 (2) (b).

14 SECTION 8. Safety clause. The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.