

jFirst Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

DRAFT  
9.6.12

**BILL 5**

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LLS NO. 13-0070 Richard Sweetman x4333

**INTERIM COMMITTEE BILL**

**Transportation Legislation Review Committee**

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**SHORT TITLE: "Penalty For DUI Involving Marijuana"**

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**A BILL FOR AN ACT**

101 **CONCERNING PENALTIES FOR PERSONS WHO DRIVE WHILE UNDER THE**  
102 **INFLUENCE OF ALCOHOL OR DRUGS.**

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**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>.)*

**Transportation Legislation Review Committee.** The existing definition of "DUI per se" is expanded to include driving when the driver's blood contains 5 nanograms or more of delta 9-tetrahydrocannabinol per milliliter in whole blood.

Under current law, in any prosecution for vehicular homicide or

*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

vehicular assault, if 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, there was 0.08 or more grams of alcohol per 100 milliliters of blood, or if there was at such time 0.08 or more grams of alcohol per 210 liters of breath, it is presumed that the defendant was under the influence of alcohol. The bill removes this presumption and states instead that such fact gives rise to a "permissible inference" that the defendant was under the influence of alcohol.

The bill removes statutory instances of the term "habitual user".

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

2           **SECTION 1.** In Colorado Revised Statutes, 42-1-102, **amend**  
3 (27.5) as follows:

4           **42-1-102. Definitions.** As used in articles 1 to 4 of this title,  
5 unless the context otherwise requires:

6           (27.5) (a) "DUI per se" means driving with a BAC of 0.08 or  
7 more, ~~and~~ IN WHICH CASE use of the term shall incorporate by reference  
8 the offense described in section 42-4-1301 (2) (a); OR

9           (b) DRIVING WHEN THE DRIVER'S BLOOD CONTAINS FIVE  
10 NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL PER  
11 MILLILITER IN WHOLE BLOOD, IN WHICH CASE USE OF THE TERM SHALL  
12 INCORPORATE BY REFERENCE THE OFFENSE DESCRIBED IN SECTION  
13 42-4-1301 (2) (a.3).

14           **SECTION 2.** In Colorado Revised Statutes, 42-4-1301, **amend**  
15 (1) (d), (2) (b), (2) (c), (4), and (6) (e); **repeal** (1) (c); and **add** (2) (a.3)  
16 as follows:

17           **42-4-1301. Driving under the influence - driving while**  
18 **impaired - driving with excessive alcoholic content - definitions -**  
19 **penalties.** (1) (c) ~~It is a misdemeanor for any person who is an habitual~~  
20 ~~user of any controlled substance defined in section 18-18-102(5), C.R.S.,~~

1 ~~to drive a motor vehicle, vehicle, or low-power scooter in this state.~~

2 (d) ~~For the purposes of this subsection (1), AS USED IN THIS~~  
3 SECTION, one or more drugs ~~shall mean all substances defined as a~~ MEANS  
4 ANY drug, AS DEFINED in section 27-80-203 (13), C.R.S., ~~and all~~  
5 ~~controlled substances~~ ANY CONTROLLED SUBSTANCE, AS defined in  
6 section 18-18-102 (5), C.R.S., and ~~glue-sniffing, aerosol inhalation, and~~  
7 ~~the inhalation of~~ any INHALED GLUE, AEROSOL, OR other toxic vapor or  
8 vapors, AS DEFINED IN SECTION 18-18-412, C.R.S.

9 (2) (a.3) IT IS A MISDEMEANOR FOR ANY PERSON TO DRIVE A  
10 MOTOR VEHICLE OR VEHICLE WHEN THE PERSON'S BLOOD CONTAINS FIVE  
11 NANOGRAMS OR MORE OF DELTA 9-TETRAHYDROCANNABINOL AT THE  
12 TIME OF DRIVING OR WITHIN TWO HOURS AFTER DRIVING. DURING A TRIAL,  
13 IF THE STATE'S EVIDENCE RAISES THE ISSUE, OR IF A DEFENDANT PRESENTS  
14 SOME CREDIBLE EVIDENCE, THAT THE DEFENDANT CONSUMED A  
15 SUBSTANCE CONTAINING DELTA 9-TETRAHYDROCANNABINOL BETWEEN  
16 THE TIME THAT THE DEFENDANT STOPPED DRIVING AND THE TIME THAT  
17 TESTING OCCURRED, SUCH ISSUE IS AN AFFIRMATIVE DEFENSE, AND THE  
18 PROSECUTION MUST ESTABLISH BEYOND A REASONABLE DOUBT THAT THE  
19 MINIMUM FIVE NANOGRAMS OF DELTA 9-TETRAHYDROCANNABINOL  
20 REQUIRED IN THIS PARAGRAPH (a.3) WAS REACHED AS A RESULT OF  
21 CONSUMPTION BY THE DEFENDANT BEFORE THE DEFENDANT STOPPED  
22 DRIVING.

23 (b) In any prosecution for the offense of DUI per se, the defendant  
24 shall be entitled to offer direct and circumstantial evidence to show that  
25 there is a disparity between what ~~the~~ ANY tests show and other facts so  
26 that the trier of fact could infer that the tests were in some way defective  
27 or inaccurate. Such evidence may include testimony of nonexpert

1 witnesses relating to the absence of any or all of the common symptoms  
2 or signs of intoxication for the purpose of impeachment of the accuracy  
3 of the analysis of the person's blood or breath.

4 (c) Pursuant to section 16-2-106, C.R.S., in charging the offense  
5 of DUI per se, it shall be sufficient to describe the offense charged as  
6 "drove a vehicle with excessive alcohol content" OR "DROVE A VEHICLE  
7 WITH EXCESSIVE THC CONTENT".

8 (4) No court shall accept a plea of guilty to a non-alcohol-related  
9 or non-drug-related traffic offense or guilty to the offense of UDD from  
10 a person charged with DUI OR DUI per se; ~~or habitual user~~; except that  
11 the court may accept a plea of guilty to a non-alcohol-related or  
12 non-drug-related traffic offense or to UDD upon a good faith  
13 representation by the prosecuting attorney that the attorney could not  
14 establish a prima facie case if the defendant were brought to trial on the  
15 original alcohol-related or drug-related offense.

16 (6)(e) **Involuntary blood test - admissibility.** Evidence acquired  
17 through an involuntary blood test pursuant to section 42-4-1301.1 (3)  
18 shall be admissible in any prosecution for DUI, DUI per se, DWAI,  
19 ~~habitual user~~, or UDD, and in any prosecution for criminally negligent  
20 homicide pursuant to section 18-3-105, C.R.S., vehicular homicide  
21 pursuant to section 18-3-106 (1) (b), C.R.S., assault in the third degree  
22 pursuant to section 18-3-204, C.R.S., or vehicular assault pursuant to  
23 section 18-3-205 (1) (b), C.R.S.

24 **SECTION 3.** In Colorado Revised Statutes, 18-3-106, **amend** (1)  
25 (b) (II), (2) introductory portion, and (2) (c) as follows:

26 **18-3-106. Vehicular homicide.** (1) (b) (II) For the purposes of  
27 this subsection (1), one or more drugs ~~shall mean all substances defined~~

1 ~~as a~~ MEANS ANY drug, AS DEFINED in section 27-80-203 (13), C.R.S., and  
2 ~~all controlled substances~~ ANY CONTROLLED SUBSTANCE, AS defined in  
3 section 18-18-102 (5), and ~~glue-sniffing, aerosol inhalation, or the~~  
4 ~~inhalation of~~ any INHALED GLUE, AEROSOL, OR other toxic vapor or  
5 vapors, as defined in section 18-18-412.

6 (2) In any prosecution for a violation of subsection (1) of this  
7 section, the amount of alcohol in the defendant's blood or breath at the  
8 time of the commission of the alleged offense, or within a reasonable time  
9 thereafter, as shown by analysis of the defendant's blood or breath, ~~shall~~  
10 ~~give~~ GIVES rise to the following presumptions:

11 (c) If there was at such time 0.08 or more grams of alcohol per  
12 one hundred milliliters of blood, or if there was at such time 0.08 or more  
13 grams of alcohol per two hundred ten liters of breath, ~~it shall be presumed~~  
14 SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE that the defendant  
15 was under the influence of alcohol.

16 **SECTION 4.** In Colorado Revised Statutes, 18-3-205, **amend** (1)  
17 (b) (II), (2) introductory portion, and (2) (c) as follows:

18 **18-3-205. Vehicular assault.** (1) (b) (II) For the purposes of this  
19 subsection (1), one or more drugs ~~shall mean all substances defined as a~~  
20 MEANS ANY drug, AS DEFINED in section 27-80-203 (13), C.R.S., and ~~all~~  
21 ~~controlled substances~~ ANY CONTROLLED SUBSTANCE, AS defined in  
22 section 18-18-102 (5), and ~~glue-sniffing, aerosol inhalation, or the~~  
23 ~~inhalation of~~ any INHALED GLUE, AEROSOL, OR other toxic vapor or  
24 vapors, as defined in section 18-18-412.

25 (2) In any prosecution for a violation of subsection (1) of this  
26 section, the amount of alcohol in the defendant's blood or breath at the  
27 time of the commission of the alleged offense, or within a reasonable time

1 thereafter, as shown by analysis of the defendant's blood or breath, ~~shall~~  
2 ~~give~~ GIVES rise to the following presumptions:

3 (c) If there was at such time 0.08 or more grams of alcohol per  
4 one hundred milliliters of blood, or if there was at such time 0.08 or more  
5 grams of alcohol per two hundred ten liters of breath, ~~it shall be presumed~~  
6 SUCH FACT GIVES RISE TO THE PERMISSIBLE INFERENCE that the defendant  
7 was under the influence of alcohol.

8 **SECTION 5.** In Colorado Revised Statutes, 42-1-102, **repeal**  
9 (41.7).

10 **SECTION 6.** In Colorado Revised Statutes, 42-2-121, **amend** (2)  
11 (b) and (5) (a) (III) as follows:

12 **42-2-121. Records to be kept by department - admission of**  
13 **records in court.** (2) (b) The department shall also keep a separate file  
14 of all abstracts of court records of dismissals of DUI, DUI per se, DWAI,  
15 ~~habitual user~~, and UDD charges and all abstracts of records in cases  
16 where the original charges were for DUI, DUI per se, DWAI, habitual  
17 user, and UDD and the convictions were for nonalcohol- or  
18 nondrug-related traffic offenses. This file shall be made available only to  
19 criminal justice agencies, as defined in section 24-72-302 (3), C.R.S.

20 (5) (a) Upon application by a person, the department shall  
21 expunge all records concerning a conviction of a person for UDD with a  
22 BAC of at least 0.02 but not more than 0.05 and any records concerning  
23 an administrative determination resulting in a revocation under section  
24 42-2-126 (3) (b) or (3) (e) if:

25 (III) The person has not been convicted for any other DUI, DUI  
26 per se, DWAI, ~~habitual user~~, or UDD offense that was committed while  
27 such person was under twenty-one years of age and is not subject to any

1 other administrative determination resulting in a revocation under section  
2 42-2-126 for any other occurrence while such person was under  
3 twenty-one years of age;

4 **SECTION 7.** In Colorado Revised Statutes, **amend** 42-2-129 as  
5 follows:

6 **42-2-129. Mandatory surrender of license or permit for**  
7 **driving under the influence or with excessive alcoholic content.**

8 Upon a plea of guilty or nolo contendere, or a verdict of guilty by the  
9 court or a jury, to DUI, OR DUI per se, ~~or habitual user~~, or, for a person  
10 under twenty-one years of age, to DUI, DUI per se, DWAI, ~~habitual user~~,  
11 or UDD, the court shall require the offender to immediately surrender the  
12 offender's driver's, minor driver's, or temporary driver's license or  
13 instruction permit to the court. The court shall forward to the department  
14 a notice of plea or verdict, on the form prescribed by the department,  
15 together with the offender's license or permit, not later than ten days after  
16 the surrender of the license or permit. Any person who does not  
17 immediately surrender the license or permit to the court, except for good  
18 cause shown, commits a class 2 misdemeanor traffic offense.

19 **SECTION 8.** In Colorado Revised Statutes, 42-2-125, **amend** (1)  
20 (b), (1) (g) (I), (1) (g) (II), and (1) (i) as follows:

21 **42-2-125. Mandatory revocation of license and permit.** (1) The  
22 department shall immediately revoke the license or permit of any driver  
23 or minor driver upon receiving a record showing that such driver has:

24 (b) Been convicted of driving a motor vehicle while under the  
25 influence of a controlled substance, as defined in section 18-18-102 (5),  
26 C.R.S.; ~~or while an habitual user of such a controlled substance;~~

27 (g) (I) Been twice convicted of any combination of DUI, DUI per

1 se, OR DWAI or habitual user for acts committed within a period of five  
2 years;

3 (II) In the case of a minor driver, been convicted of DUI, DUI per  
4 se, OR DWAI or habitual user committed while such driver was under  
5 twenty-one years of age;

6 (i) Been convicted of DUI, DUI per se, OR DWAI or habitual user  
7 and has two previous convictions of any of such offenses. The license of  
8 any driver shall be revoked for an indefinite period and shall only be  
9 reissued upon proof to the department that said driver has completed a  
10 level II alcohol and drug education and treatment program certified by the  
11 unit in the department of human services that administers behavioral  
12 health programs and services, including those related to mental health and  
13 substance abuse, pursuant to section 42-4-1301.3 and that said driver has  
14 demonstrated knowledge of the laws and driving ability through the  
15 regular motor vehicle testing process. In no event shall such license be  
16 reissued in less than two years.

17 **SECTION 9.** In Colorado Revised Statutes, 42-2-127, **amend** (1)  
18 (a) and (6) (b); and **repeal** (5) (b) (II) as follows:

19 **42-2-127. Authority to suspend license - to deny license - type**  
20 **of conviction - points.** (1) (a) Except as provided in paragraph (b) of  
21 subsection (8) of this section, the department has the authority to suspend  
22 the license of any driver who, in accordance with the schedule of points  
23 set forth in this section, has been convicted of traffic violations resulting  
24 in the accumulation of twelve points or more within any twelve  
25 consecutive months or eighteen points or more within any twenty-four  
26 consecutive months, or, in the case of a minor driver eighteen years of age  
27 or older, who has accumulated nine points or more within any twelve

1 consecutive months, or twelve points or more within any twenty-four  
2 consecutive months, or fourteen points or more for violations occurring  
3 after reaching the age of eighteen years, or, in the case of a minor driver  
4 under the age of eighteen years, who has accumulated more than five  
5 points within any twelve consecutive months or more than six points for  
6 violations occurring prior to reaching the age of eighteen years; except  
7 that the accumulation of points causing the subjection to suspension of  
8 the license of a chauffeur who, in the course of employment, has as a  
9 principal duty the operation of a motor vehicle shall be sixteen points in  
10 one year, twenty-four points in two years, or twenty-eight points in four  
11 years, if all the points are accumulated while said chauffeur is in the  
12 course of employment. Any provision of this section to the contrary  
13 notwithstanding, the license of a chauffeur who is convicted of DUI, DUI  
14 per se, DWAI, ~~habitual user~~, UDD, or leaving the scene of an accident  
15 shall be suspended in the same manner as if the offense occurred outside  
16 the course of employment. Whenever a minor driver under the age of  
17 eighteen years receives a summons for a traffic violation, the minor's  
18 parent or legal guardian or, if the minor is without parents or guardian,  
19 the person who signed the minor driver's application for a license shall  
20 immediately be notified by the court from which the summons was  
21 issued.

22 (5) Point system schedule:

23 Type of conviction	Points
24 (b) (II) <del>Habitual user</del>	12

25 (6) (b) For the purposes of this article, a plea of no contest  
26 accepted by the court or the forfeiture of any bail or collateral deposited  
27 to secure a defendant's appearance in court or the failure to appear in

1 court by a defendant charged with DUI, DUI per se, ~~habitual user~~, or  
2 UDD who has been issued a summons and notice to appear pursuant to  
3 section 42-4-1707 as evidenced by records forwarded to the department  
4 in accordance with the provisions of section 42-2-124 shall be considered  
5 as a conviction.

6 **SECTION 10.** In Colorado Revised Statutes, 42-2-132, **amend**  
7 (2) (a) (III) and (2) (a) (IV) as follows:

8 **42-2-132. Period of suspension or revocation.** (2) (a) (III) In the  
9 case of a minor driver whose license has been revoked as a result of one  
10 conviction for DUI, DUI per se, DWAI, ~~habitual user~~, or UDD, the minor  
11 driver, unless otherwise required after an evaluation made pursuant to  
12 section 42-4-1301.3, must complete a level I alcohol and drug education  
13 program certified by the unit in the department of human services that  
14 administers behavioral health programs and services, including those  
15 related to mental health and substance abuse.

16 (IV) Any person whose license or privilege to drive a motor  
17 vehicle on the public highways has been revoked under section 42-2-125  
18 (1) (g) (I) or (1) (i) or 42-2-203 where the revocation was due in part to  
19 a DUI, DUI per se, OR DWAI or ~~habitual user~~ conviction shall be  
20 required to present an affidavit stating that the person has obtained at the  
21 person's own expense a signed lease agreement for the installation and  
22 use of an approved ignition interlock device, as defined in section  
23 42-2-132.5 (9) (a), in each motor vehicle on which the person's name  
24 appears on the registration and any other vehicle that the person may  
25 drive during the period of the interlock-restricted license.

26 **SECTION 11.** In Colorado Revised Statutes, 42-2-132.5, **amend**  
27 (1) (a), (1) (c), and (4) (c) as follows:

1           **42-2-132.5. Mandatory and voluntary restricted licenses**  
2 **following alcohol convictions - rules.** (1) **Persons required to hold an**  
3 **interlock-restricted license.** The following persons shall be required to  
4 hold an interlock-restricted license pursuant to this section for at least one  
5 year following reinstatement prior to being eligible to obtain any other  
6 driver's license issued under this article:

7           (a) A person whose privilege to drive was revoked for multiple  
8 convictions for any combination of a DUI, DUI per se, OR DWAI ~~or~~  
9 ~~habitual user~~ pursuant to section 42-2-125 (1) (g) (I) or (1) (i);

10           (c) A person whose privilege to drive was revoked as an habitual  
11 offender under section 42-2-203 in which the revocation was due in part  
12 to a DUI, DUI per se, OR DWAI ~~or habitual user~~ conviction; or

13           (4) **Persons who may acquire an interlock-restricted license**  
14 **prior to serving a full-term revocation.** (c) In order to be eligible for  
15 early reinstatement pursuant to this subsection (4), a person who has been  
16 designated an habitual offender under the provisions of section 42-2-202  
17 must have at least one conviction for DUI, DUI per se, OR DWAI ~~or~~  
18 ~~habitual user~~ under section 42-4-1301, and no contributing violations  
19 other than violations for driving under restraint under section 42-2-138  
20 or reckless driving under section 42-4-1401.

21           **SECTION 12.** In Colorado Revised Statutes, 42-2-138, **amend**  
22 (1) (a), (1) (d) (I), and (1) (d) (II) as follows:

23           **42-2-138. Driving under restraint - penalty.** (1) (a) Any person  
24 who drives a motor vehicle or off-highway vehicle upon any highway of  
25 this state with knowledge that the person's license or privilege to drive,  
26 either as a resident or a nonresident, is under restraint for any reason other  
27 than conviction of DUI, DUI per se, DWAI, ~~habitual user~~, or UDD is

1 guilty of a misdemeanor. A court may sentence a person convicted of this  
2 misdemeanor to imprisonment in the county jail for a period of not more  
3 than six months and may impose a fine of not more than five hundred  
4 dollars.

5 (d) (I) A person who drives a motor vehicle or off-highway  
6 vehicle upon any highway of this state with knowledge that the person's  
7 license or privilege to drive, either as a resident or nonresident, is  
8 restrained under section 42-2-126 (3), is restrained solely or partially  
9 because of a conviction of DUI, DUI per se, DWAI, ~~habitual user~~, or  
10 UDD, or is restrained in another state solely or partially because of an  
11 alcohol-related driving offense is guilty of a misdemeanor and, upon  
12 conviction thereof, shall be punished by imprisonment in the county jail  
13 for not less than thirty days nor more than one year and, in the discretion  
14 of the court, by a fine of not less than five hundred dollars nor more than  
15 one thousand dollars. Upon a second or subsequent conviction, the person  
16 shall be punished by imprisonment in the county jail for not less than  
17 ninety days nor more than two years and, in the discretion of the court, by  
18 a fine of not less than five hundred dollars nor more than three thousand  
19 dollars. The minimum county jail sentence imposed by this subparagraph  
20 (I) shall be mandatory, and the court shall not grant probation or a  
21 suspended sentence thereof; but, in a case where the defendant is  
22 convicted although the defendant established that he or she had to drive  
23 the motor vehicle in violation of this subparagraph (I) because of an  
24 emergency, the mandatory jail sentence, if any, shall not apply, and, for  
25 a first conviction, the court may impose a sentence of imprisonment in the  
26 county jail for a period of not more than one year and, in the discretion of  
27 the court, a fine of not more than one thousand dollars, and, for a second

1 or subsequent conviction, the court may impose a sentence of  
2 imprisonment in the county jail for a period of not more than two years  
3 and, in the discretion of the court, a fine of not more than three thousand  
4 dollars.

5 (II) In any trial for a violation of subparagraph (I) of this  
6 paragraph (d), a duly authenticated copy of the record of the defendant's  
7 former convictions and judgments for DUI, DUI per se, DWAI, ~~habitual~~  
8 ~~user~~, or UDD or an alcohol-related offense committed in another state  
9 from any court of record or a certified copy of the record of any denial or  
10 revocation of the defendant's driving privilege under section 42-2-126 (3)  
11 from the department shall be prima facie evidence of the convictions,  
12 judgments, denials, or revocations and may be used in evidence against  
13 the defendant. Identification photographs and fingerprints that are part of  
14 the record of the former convictions, judgments, denials, or revocations  
15 and the defendant's incarceration after sentencing for any of the former  
16 convictions, judgments, denials, or revocations shall be prima facie  
17 evidence of the identity of the defendant and may be used in evidence  
18 against the defendant.

19 **SECTION 13.** In Colorado Revised Statutes, 42-2-202, **amend**  
20 (2) (a) (I) as follows:

21 **42-2-202. Habitual offenders - frequency and type of**  
22 **violations.** (2) (a) An habitual offender is a person having three or more  
23 convictions of any of the following separate and distinct offenses arising  
24 out of separate acts committed within a period of seven years:

25 (I) DUI, DUI per se, OR DWAI; ~~or habitual user~~;

26 **SECTION 14.** In Colorado Revised Statutes, 42-2-405, **amend**  
27 (3) (a) as follows:

1           **42-2-405. Driver's license disciplinary actions - grounds for**  
2 **denial - suspension - revocation - disqualification.** (3) For purposes of  
3 the imposition of restraints and sanctions against commercial driving  
4 privileges:

5           (a) A conviction for DUI, DUI per se, OR DWAI, ~~or habitual user,~~  
6 or a substantially similar law of any other state pertaining to drinking and  
7 driving, or an administrative determination of a violation of section  
8 42-2-126 (3) (a) or (3) (b) shall be deemed driving under the influence;  
9 and

10           **SECTION 15.** In Colorado Revised Statutes, 42-4-1301.1,  
11 **amend** (2) (a) (I) and (2) (b) (I) as follows:

12           **42-4-1301.1. Expressed consent for the taking of blood, breath,**  
13 **urine, or saliva sample - testing.** (2) (a) (I) A person who drives a  
14 motor vehicle upon the streets and highways and elsewhere throughout  
15 this state shall be required to take and complete, and to cooperate in the  
16 taking and completing of, any test or tests of the person's breath or blood  
17 for the purpose of determining the alcoholic content of the person's blood  
18 or breath when so requested and directed by a law enforcement officer  
19 having probable cause to believe that the person was driving a motor  
20 vehicle in violation of the prohibitions against DUI, DUI per se, DWAI,  
21 ~~habitual user,~~ or UDD. Except as otherwise provided in this section, if a  
22 person who is twenty-one years of age or older requests that the test be a  
23 blood test, then the test shall be of his or her blood; but, if the person  
24 requests that a specimen of his or her blood not be drawn, then a  
25 specimen of the person's breath shall be obtained and tested. A person  
26 who is under twenty-one years of age shall be entitled to request a blood  
27 test unless the alleged violation is UDD, in which case a specimen of the

1 person's breath shall be obtained and tested, except as provided in  
2 subparagraph (II) of this paragraph (a).

3 (b) (I) Any person who drives any motor vehicle upon the streets  
4 and highways and elsewhere throughout this state shall be required to  
5 submit to and to complete, and to cooperate in the completing of, a test  
6 or tests of such person's blood, saliva, and urine for the purpose of  
7 determining the drug content within the person's system when so  
8 requested and directed by a law enforcement officer having probable  
9 cause to believe that the person was driving a motor vehicle in violation  
10 of the prohibitions against DUI, OR DWAI ~~or habitual user~~ and when it  
11 is reasonable to require such testing of blood, saliva, and urine to  
12 determine whether such person was under the influence of, or impaired  
13 by, one or more drugs, or one or more controlled substances, or a  
14 combination of both alcohol and one or more drugs, or a combination of  
15 both alcohol and one or more controlled substances.

16 **SECTION 16.** In Colorado Revised Statutes, 42-4-1307, **amend**  
17 (3) (a) introductory portion, (5) (a) introductory portion, (5) (b)  
18 introductory portion, (6) (a) introductory portion, (9) (a), (10) (a), (10)  
19 (b), (10) (c), (10) (d) (I), (12), and (13) as follows:

20 **42-4-1307. Penalties for traffic offenses involving alcohol and**  
21 **drugs - repeal.** (3) **First offenses - DUI, DUI per se, and habitual**  
22 **user.** (a) Except as otherwise provided in subsections (5) and (6) of this  
23 section, a person who is convicted of DUI OR DUI per se ~~or habitual user~~  
24 shall be punished by:

25 (5) **Second offenses.** (a) Except as otherwise provided in  
26 subsection (6) of this section, a person who is convicted of DUI, DUI per  
27 se, OR DWAI ~~or habitual user~~ who, at the time of sentencing, has a prior

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

7 (b) If a person is convicted of DUI, DUI per se, DWAI or ~~habitual~~  
8 ~~user~~ and the violation occurred less than five years after the date of a  
9 previous violation for which the person was convicted of DUI, DUI per  
10 se, DWAI, ~~habitual user~~, vehicular homicide pursuant to section 18-3-106  
11 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b),  
12 C.R.S., aggravated driving with a revoked license pursuant to section  
13 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's  
14 driver's license was under restraint pursuant to section 42-2-138 (1) (d),  
15 the court shall not have discretion to employ any sentencing alternatives  
16 described in section 18-1.3-106, C.R.S., during the minimum period of  
17 imprisonment described in subparagraph (I) of paragraph (a) of this  
18 subsection (5); except that a court may allow the person to participate in  
19 a program pursuant to section 18-1.3-106 (1) (a) (II), (1) (a) (IV), or (1)  
20 (a) (V), C.R.S., only if the program is available through the county in  
21 which the person is imprisoned and only for the purpose of:

22 (6) **Third and subsequent offenses.** (a) A person who is  
23 convicted of DUI, DUI per se, OR DWAI or ~~habitual user~~ who, at the time  
24 of sentencing, has two or more prior convictions of DUI, DUI per se,  
25 DWAI, ~~habitual user~~, vehicular homicide pursuant to section 18-3-106 (1)  
26 (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S.,  
27 aggravated driving with a revoked license pursuant to section 42-2-206

1 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's driver's  
2 license was under restraint pursuant to section 42-2-138 (1) (d) shall be  
3 punished by:

4 (9) **Previous convictions.** (a) For the purposes of subsections (5)  
5 and (6) of this section, a person shall be deemed to have a previous  
6 conviction for DUI, DUI per se, DWAI, ~~habitual user~~, vehicular homicide  
7 pursuant to section 18-3-106 (1) (b), C.R.S., vehicular assault pursuant to  
8 section 18-3-205 (1) (b), C.R.S., aggravated driving with a revoked  
9 license pursuant to section 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or  
10 driving while the person's driver's license was under restraint pursuant to  
11 section 42-2-138 (1) (d), if the person has been convicted under the laws  
12 of this state or under the laws of any other state, the United States, or any  
13 territory subject to the jurisdiction of the United States, of an act that, if  
14 committed within this state, would constitute the offense of DUI, DUI per  
15 se, DWAI, ~~habitual user~~, vehicular homicide pursuant to section 18-3-106  
16 (1) (b), C.R.S., vehicular assault pursuant to section 18-3-205 (1) (b),  
17 C.R.S., aggravated driving with a revoked license pursuant to section  
18 42-2-206 (1) (b) (I) (A) or (1) (b) (I) (B), or driving while the person's  
19 driver's license was under restraint pursuant to section 42-2-138 (1) (d).

20 (10) **Additional costs and surcharges.** In addition to the  
21 penalties prescribed in this section:

22 (a) Persons convicted of DUI, DUI per se, DWAI, ~~habitual user~~,  
23 and UDD are subject to the costs imposed by section 24-4.1-119 (1) (c),  
24 C.R.S., relating to the crime victim compensation fund;

25 (b) Persons convicted of DUI, DUI per se, AND DWAI ~~and~~  
26 ~~habitual user~~ are subject to a surcharge of at least one hundred dollars but  
27 no more than five hundred dollars to fund programs to reduce the number

1 of persistent drunk drivers. The surcharge shall be mandatory, and the  
2 court shall not have discretion to suspend or waive the surcharge; except  
3 that the court may suspend or waive the surcharge if the court determines  
4 that a person is indigent. Moneys collected for the surcharge shall be  
5 transmitted to the state treasurer, who shall credit the amount collected to  
6 the persistent drunk driver cash fund created in section 42-3-303.

7 (c) Persons convicted of DUI, DUI per se, DWAI, ~~habitual user~~,  
8 and UDD are subject to a surcharge of twenty dollars to be transmitted to  
9 the state treasurer who shall deposit moneys collected for the surcharge  
10 in the Colorado traumatic brain injury trust fund created pursuant to  
11 section 26-1-309, C.R.S.;

12 (d) (I) Persons convicted of DUI, DUI per se, AND DWAI ~~and~~  
13 ~~habitual user~~ are subject to a surcharge of at least one dollar but no more  
14 than ten dollars for programs to fund efforts to address alcohol and  
15 substance abuse problems among persons in rural areas. The surcharge  
16 shall be mandatory, and the court shall not have discretion to suspend or  
17 waive the surcharge; except that the court may suspend or waive the  
18 surcharge if the court determines that a person is indigent. Any moneys  
19 collected for the surcharge shall be transmitted to the state treasurer, who  
20 shall credit the same to the rural alcohol and substance abuse cash fund  
21 created in section 27-80-117 (3), C.R.S.

22 (12) **Victim impact panels.** In addition to any other penalty  
23 provided by law, the court may sentence a person convicted of DUI, DUI  
24 per se, DWAI, ~~habitual user~~, or UDD to attend and pay for one  
25 appearance at a victim impact panel approved by the court, for which the  
26 fee assessed to the person shall not exceed twenty-five dollars.

27 (13) **Alcohol and drug evaluation and supervision costs.** In

1 addition to any fines, fees, or costs levied against a person convicted of  
2 DUI, DUI per se, DWAI, ~~habitual user~~, or UDD, the judge shall assess  
3 each such person for the cost of the presentence or postsentence alcohol  
4 and drug evaluation and supervision services.

5 **SECTION 17.** In Colorado Revised Statutes, 42-4-1702, **amend**  
6 (1) as follows:

7 **42-4-1702. Alcohol- or drug-related traffic offenses - collateral**  
8 **attack.** (1) Except as otherwise provided in paragraph (b) of this  
9 subsection (1), no person against whom a judgment has been entered for  
10 DUI, DUI per se, DWAI, ~~habitual user~~, or UDD shall collaterally attack  
11 the validity of that judgment unless such attack is commenced within six  
12 months after the date of entry of the judgment.

13 **SECTION 18.** In Colorado Revised Statutes, 42-4-1705, **amend**  
14 (1) (c) as follows:

15 **42-4-1705. Person arrested to be taken before the proper**  
16 **court.** (1) Whenever a person is arrested for any violation of this article  
17 punishable as a misdemeanor, the arrested person shall be taken without  
18 unnecessary delay before a county judge who has jurisdiction of such  
19 offense as provided by law, in any of the following cases:

20 (c) When the person is arrested and charged with DUI, DUI per  
21 se, ~~habitual user~~, or UDD;

22 **SECTION 19.** In Colorado Revised Statutes, 42-4-1715, **amend**  
23 (1) (b) (II) and (4) (a) (II) as follows:

24 **42-4-1715. Convictions, judgments, and charges recorded -**  
25 **public inspection.** (1) (b) (II) Upon receiving a request for  
26 expungement, the court may delay consideration of such request until  
27 sufficient time has elapsed to ensure that the person is not convicted for

1 any additional offense of DUI, DUI per se, DWAI, ~~habitual user~~, or UDD  
2 committed while the person was under twenty-one years of age.

3 (4) (a) Every court of record shall also forward a like report to the  
4 department:

5 (II) Upon the dismissal of a charge for DUI, DUI per se, DWAI,  
6 ~~habitual user~~, or UDD or if the original charge was for DUI, DUI per se,  
7 DWAI, ~~habitual user~~, or UDD and the conviction was for a nonalcohol-  
8 or nondrug-related traffic offense.

9 **SECTION 20.** In Colorado Revised Statutes, 42-7-408, **amend**  
10 (1) (c) (I) as follows:

11 **42-7-408. Proof of financial responsibility - methods of giving**  
12 **proof - duration - exception.** (1) (c) Notwithstanding the three-year  
13 requirement in paragraph (b) of this subsection (1):

14 (I) If an insured has been found guilty of DUI, DUI per se, OR  
15 DWAI or ~~habitual user~~ or if the insured's license has been revoked  
16 pursuant to section 42-2-126, other than a revocation under section  
17 42-2-126 (3) (b) or (3) (e), only one time and no accident was involved  
18 in such offense, proof of financial responsibility for the future shall be  
19 required to be maintained only for as long as the insured's driving  
20 privilege is ordered to be under restraint, up to a maximum of three years.  
21 The time period for maintaining the future proof of liability insurance  
22 shall begin at the time the driver reinstates his or her driving privilege.

23 **SECTION 21.** In Colorado Revised Statutes, 40-10.1-110,  
24 **amend** (3) (c) (I) as follows:

25 **40-10.1-110. Criminal history record check.** (3) An individual  
26 whose criminal history record is checked pursuant to this section is  
27 disqualified and prohibited from driving motor vehicles for the motor

1 carrier described in subsection (1) of this section if the criminal history  
2 record check reflects that:

3 (c) Within the two years immediately preceding the date the  
4 criminal history record check is completed, the individual was:

5 (I) Convicted in this state of driving under the influence, as  
6 defined in section 42-4-1301 (1) (f), C.R.S.; driving with excessive  
7 alcoholic content, as described in section 42-4-1301 (2) (a), C.R.S.; OR  
8 driving while ability impaired, as defined in section 42-4-1301 (1) (g),  
9 C.R.S.; ~~or driving while an habitual user of a controlled substance, as~~  
10 ~~described in section 42-4-1301 (1) (c), C.R.S.;~~ or

11 **SECTION 22. Safety clause.** The general assembly hereby finds,  
12 determines, and declares that this act is necessary for the immediate  
13 preservation of the public peace, health, and safety.