

**First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**REREVISED**

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

LLS NO. 17-0083.01 Richard Sweetman x4333

**HOUSE BILL 17-1288**

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**A BILL FOR AN ACT**

101 **CONCERNING THE PENALTIES FOR DUI OFFENDERS WHO COMMIT**  
102 **THEIR FOURTH AND SUBSEQUENT DUI OFFENSES.**

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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://leg.colorado.gov/>.)*

Under current law, a person who commits a fourth or subsequent DUI offense commits a class 4 felony. If a court sentences the person to probation, the bill requires the court to choose one of the following sentencing options:

- ! Require the defendant to serve at least 90 days but not more than 180 days imprisonment in the county jail. During the

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  
3rd Reading Unamended  
May 1, 2017

SENATE  
2nd Reading Unamended  
April 28, 2017

HOUSE  
3rd Reading Unamended  
April 19, 2017

HOUSE  
Amended 2nd Reading  
April 18, 2017

mandatory 90-day period of imprisonment, the defendant is not eligible for good-time deductions of his or her sentence or for trusty prisoner status; except that a defendant receives credit for any time that he or she served in custody for the violation prior to his or her conviction.

- ! Require the defendant to serve at least 120 days but not more than 2 years of imprisonment in the county jail through participation in an alternative sentencing program if such programs are available through the county in which the defendant is imprisoned and only for certain purposes. During the mandatory 120-day period of imprisonment, the defendant is not eligible for good-time deductions of his or her sentence or for trusty prisoner status; except that a defendant receives credit for any time that he or she served in custody for the violation prior to his or her conviction.

Additionally, the bill states that if the court sentences such an offender to a term of probation, the court shall:

- ! Require the defendant to complete at least 48 hours but not more than 120 hours of useful public service, which may not be suspended;
- ! Include, as a condition of the defendant's probation, a requirement that the defendant complete a level II alcohol and drug driving safety education or treatment program at the defendant's own expense; and
- ! Consider imposing certain other conditions of probation.

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

2 **SECTION 1.** In Colorado Revised Statutes, 42-4-1307, **add** (6.5)  
3 as follows:

4 **42-4-1307. Penalties for traffic offenses involving alcohol and**  
5 **drugs - legislative declaration - definitions - repeal. (6.5) Felony**  
6 **offenses.** (a) A PERSON WHO COMMITS A FELONY DUI, DUI PER SE, OR  
7 DWAI OFFENSE SHALL BE SENTENCED IN ACCORDANCE WITH THE  
8 PROVISIONS OF SECTION 18-1.3-401 AND THIS SUBSECTION (6.5).

9 (b) IF THE COURT SENTENCES THE DEFENDANT TO A TERM OF  
10 PROBATION AS PROVIDED BY SECTION 18-1.3-202, THE COURT SHALL  
11 **ORDER AS A CONDITION OF PROBATION ONE OF THE FOLLOWING:**

1           (I) REQUIRE THE DEFENDANT TO SERVE AT LEAST NINETY DAYS  
2 BUT NOT MORE THAN ONE HUNDRED EIGHTY DAYS IMPRISONMENT IN THE  
3 COUNTY JAIL. DURING THE MANDATORY NINETY-DAY PERIOD OF  
4 IMPRISONMENT, THE DEFENDANT IS NOT ELIGIBLE FOR DEDUCTIONS OF HIS  
5 OR HER SENTENCE PURSUANT TO SECTION 17-26-109 OR FOR TRUSTY  
6 PRISONER STATUS PURSUANT TO SECTION 17-26-109 (1)(c); EXCEPT THAT  
7 A DEFENDANT RECEIVES CREDIT FOR ANY TIME THAT HE OR SHE SERVED IN  
8 CUSTODY FOR THE VIOLATION PRIOR TO HIS OR HER CONVICTION. DURING  
9 THIS MANDATORY PERIOD OF IMPRISONMENT, THE COURT DOES NOT HAVE  
10 DISCRETION TO EMPLOY ANY SENTENCING ALTERNATIVES DESCRIBED IN  
11 SECTION 18-1.3-106.

12           (II) REQUIRE THE DEFENDANT TO SERVE AT LEAST ONE HUNDRED  
13 TWENTY DAYS BUT NOT MORE THAN TWO YEARS OF IMPRISONMENT IN THE  
14 COUNTY JAIL THROUGH PARTICIPATION IN A PROGRAM PURSUANT TO  
15 SECTION 18-1.3-106 (1)(a)(II) OR (1)(a)(IV) IF THE PROGRAM IS  
16 AVAILABLE THROUGH THE COUNTY IN WHICH THE DEFENDANT IS  
17 IMPRISONED AND ONLY FOR THE PURPOSES OF CONTINUING A POSITION OF  
18 EMPLOYMENT THAT THE DEFENDANT HELD AT THE TIME OF SENTENCING  
19 FOR THE VIOLATION OR FOR CONTINUING ATTENDANCE AT AN  
20 EDUCATIONAL INSTITUTION AT WHICH THE DEFENDANT WAS ENROLLED AT  
21 THE TIME OF SENTENCING FOR THE VIOLATION. DURING THE MANDATORY  
22 ONE-HUNDRED-TWENTY-DAY PERIOD OF IMPRISONMENT, THE DEFENDANT  
23 IS NOT ELIGIBLE FOR DEDUCTIONS OF HIS OR HER SENTENCE PURSUANT TO  
24 SECTION 17-26-109 OR FOR TRUSTY PRISONER STATUS PURSUANT TO  
25 SECTION 17-26-109 (1)(c); EXCEPT THAT A DEFENDANT RECEIVES CREDIT  
26 FOR ANY TIME THAT HE OR SHE SERVED IN CUSTODY FOR THE VIOLATION  
27 PRIOR TO HIS OR HER CONVICTION. DURING THIS MANDATORY PERIOD OF

1 IMPRISONMENT, THE COURT DOES NOT HAVE DISCRETION TO EMPLOY ANY  
2 OTHER SENTENCING ALTERNATIVES DESCRIBED IN SECTION 18-1.3-106;  
3 EXCEPT THAT A COURT MAY GRANT PERMISSION FOR A DEFENDANT TO  
4 LEAVE THE JAIL TO OBTAIN MEDICAL TREATMENT, PURSUANT TO SECTION  
5 18-1.3-106 (1)(a)(V).

6 (c) ADDITIONALLY, IF THE COURT SENTENCES THE DEFENDANT TO  
7 A TERM OF PROBATION AS PROVIDED BY SECTION 18-1.3-202, THEN, AS A  
8 CONDITION OF PROBATION, THE COURT SHALL:

9 (I) REQUIRE THE DEFENDANT TO COMPLETE AT LEAST  
10 FORTY-EIGHT HOURS BUT NOT MORE THAN ONE HUNDRED TWENTY HOURS  
11 OF USEFUL PUBLIC SERVICE, WHICH MAY NOT BE SUSPENDED; AND

12 (II) SENTENCE THE DEFENDANT IN ACCORDANCE WITH SUBSECTION  
13 (7)(b) OF THIS SECTION.

14 (d) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (6.5)(a)  
15 OF THIS SECTION, BEFORE THE IMPOSITION OF ANY SENTENCE TO THE  
16 DEPARTMENT OF CORRECTIONS FOR A FELONY DUI, DUI PER SE, OR DWAI  
17 OFFENSE, AT SENTENCING OR AT RESENTENCING AFTER A REVOCATION OF  
18 PROBATION OR A COMMUNITY CORRECTIONS SENTENCE, THE COURT SHALL  
19 CONSIDER ALL THE FACTORS DESCRIBED IN SUBSECTION (6.5)(e) OF THIS  
20 SECTION.

21 (e) IF THE COURT SENTENCES THE DEFENDANT TO THE  
22 DEPARTMENT OF CORRECTIONS FOR A FELONY DUI, DUI PER SE, OR DWAI  
23 OFFENSE, IT MUST DETERMINE THAT INCARCERATION IS THE MOST  
24 SUITABLE OPTION GIVEN THE FACTS AND CIRCUMSTANCES OF THE CASE,  
25 INCLUDING THE DEFENDANT'S WILLINGNESS TO PARTICIPATE IN  
26 TREATMENT. ADDITIONALLY, THE COURT SHALL CONSIDER WHETHER ALL  
27 OTHER REASONABLE AND APPROPRIATE SANCTIONS AND RESPONSES TO

1 THE VIOLATION THAT ARE AVAILABLE TO THE COURT HAVE BEEN  
2 EXHAUSTED, DO NOT APPEAR LIKELY TO BE SUCCESSFUL IF TRIED, OR  
3 PRESENT AN UNACCEPTABLE RISK TO PUBLIC SAFETY.

4 **SECTION 2.** In Colorado Revised Statutes, 42-4-1301, **repeal**  
5 (1)(k) as follows:

6 **42-4-1301. Driving under the influence - driving while**  
7 **impaired - driving with excessive alcoholic content - definitions -**  
8 **penalties.** (1) (k) ~~(H) If a defendant is convicted of a class 4 felony~~  
9 ~~pursuant to this section, the court shall sentence the person in accordance~~  
10 ~~with the provisions of section 18-1.3-401, C.R.S.~~

11 ~~(H)(A) Notwithstanding the provisions of subparagraph (I) of this~~  
12 ~~paragraph (k), before the imposition of any sentence to the department of~~  
13 ~~corrections for a felony DUI, DUI per se, or DWAI offense, at sentencing~~  
14 ~~or at resentencing after a revocation of probation or a community~~  
15 ~~corrections sentence, the court shall consider all the factors described in~~  
16 ~~sub-subparagraph (B) of this subparagraph (H).~~

17 ~~(B) If the court sentences the defendant to the department of~~  
18 ~~corrections for a felony DUI, DUI per se, or DWAI offense, it must~~  
19 ~~determine that incarceration is the most suitable option given the facts~~  
20 ~~and circumstances of the case, including the defendant's willingness to~~  
21 ~~participate in treatment. Additionally, the court shall consider whether all~~  
22 ~~other reasonable and appropriate sanctions and responses to the violation~~  
23 ~~that are available to the court have been exhausted, do not appear likely~~  
24 ~~to be successful if tried, or present an unacceptable risk to public safety.~~

25 **SECTION 3.** In Colorado Revised Statutes, 18-1.3-202, **amend**  
26 (1) as follows:

27 **18-1.3-202. Probationary power of court.** (1) (a) When it

1 appears to the satisfaction of the court that the ends of justice and the best  
2 interest of the public, as well as the defendant, will be served thereby, the  
3 court may grant the defendant probation for such period and upon such  
4 terms and conditions as it deems best. The length of probation shall be  
5 subject to the discretion of the court and may exceed the maximum period  
6 of incarceration authorized for the classification of the offense of which  
7 the defendant is convicted but shall not exceed five years for any  
8 misdemeanor or petty offense. If the court chooses to grant the defendant  
9 probation, the order placing the defendant on probation shall take effect  
10 upon entry and, if any appeal is brought, shall remain in effect pending  
11 review by an appellate court unless the court grants a stay of probation  
12 pursuant to section 16-4-201. ~~C.R.S.~~ Unless an appeal is filed that raises  
13 a claim that probation was granted contrary to the provisions of this title,  
14 the trial court shall retain jurisdiction of the case for the purpose of  
15 adjudicating complaints filed against the defendant that allege a violation  
16 of the terms and conditions of probation. In addition to imposing other  
17 conditions, the court has the power to commit the defendant to any jail  
18 operated by the county or city and county in which the offense was  
19 committed during such time or for such intervals within the period of  
20 probation as the court determines. EXCEPT AS DESCRIBED IN SUBSECTION  
21 (1)(b) OF THIS SECTION, the aggregate length of any such commitment  
22 whether continuous or at designated intervals ~~shall~~ MAY not exceed ninety  
23 days for a felony, sixty days for a misdemeanor, or ten days for a petty  
24 offense unless it is a part of a work release program pursuant to section  
25 18-1.3-207. That the defendant submit to commitment imposed under this  
26 section ~~shall be~~ IS deemed a condition of probation.

27 (b) FOR A DEFENDANT WHO IS CONVICTED OF A FELONY OFFENSE

1 DESCRIBED IN SECTION 42-4-1301 (1)(a), (1)(b), OR (2)(a), THE  
2 AGGREGATE LENGTH OF ANY COMMITMENT TO A COUNTY JAIL IS  
3 DETERMINED AS PROVIDED IN SECTION 42-4-1307 (6.5)(b).

4 **SECTION 4. Applicability.** This act applies to offenses  
5 committed on or after the effective date of this act.

6 **SECTION 5. Act subject to petition - effective date.** This act  
7 takes effect at 12:01 a.m. on the day following the expiration of the  
8 ninety-day period after final adjournment of the general assembly (August  
9 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a  
10 referendum petition is filed pursuant to section 1 (3) of article V of the  
11 state constitution against this act or an item, section, or part of this act  
12 within such period, then the act, item, section, or part will not take effect  
13 unless approved by the people at the general election to be held in  
14 November 2018 and, in such case, will take effect on the date of the  
15 official declaration of the vote thereon by the governor.