

COLORADO DUI/DWAI LAWS

§ 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 0.08 or more, and use of the term shall incorporate by reference the offense described in [section 42-4-1301\(2\)\(a\)](#).

(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\(2\)\(a.5\)](#).

§ 42-4-1301.

DRIVING UNDER THE INFLUENCE--DRIVING WHILE IMPAIRED--DRIVING WITH EXCESSIVE ALCOHOLIC CONTENT--DEFINITIONS--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.

COLORADO DUI/DWAI LAWS

(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 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 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 person's BAC is 0.08 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 0.08 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)(I) 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 person's BAC, as shown by analysis of the person's breath, is at least 0.02 but not more than 0.05 at the time of driving or within two hours after driving. The court, upon sentencing a defendant pursuant to this subparagraph (I), may, in addition to any penalty imposed under a class A traffic infraction, order that the defendant perform up to twenty-four hours of useful public service, subject to the conditions and restrictions of [section 18-1.3-507, C.R.S.](#), and may further order that the defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program at such defendant's own expense.

(II) A second or subsequent violation of this paragraph (a.5) shall be a class 2 traffic misdemeanor.

COLORADO DUI/DWAI LAWS

(b) In any prosecution for 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 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) No court shall accept a plea of guilty to a non-alcohol-related or non-drug-related traffic offense or guilty to the offense of UDD from a person charged with DUI, DUI per se, 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 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) Notwithstanding the provisions of [section 18-1-408, C.R.S.](#), during a trial of any person accused of 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 DUI or DWAI, or DUI per se, or both DUI and DUI per se, or both DWAI and DUI per se. If the person is convicted of more than one violation, the sentences imposed shall run concurrently.

(6)(a) In any prosecution for DUI or DWAI, the defendant's BAC at the time of the commission of the alleged offense or within a reasonable time thereafter gives rise to the following presumptions or inferences:

(I) If at such time the defendant's BAC was 0.05 or less, 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) If at such time the defendant's BAC was in excess of 0.05 but less than 0.08, such fact gives rise to the 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) If at such time the defendant's BAC was 0.08 or more, such fact gives rise to the permissible inference that the defendant was under the influence of alcohol.

COLORADO DUI/DWAI LAWS

(b) The limitations of this subsection (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) 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. The department of public health and environment may, by rule, determine that, because of the reliability of the results from certain devices, the collection or preservation of a second sample of a person's blood, saliva, or urine or the collection and preservation of a delayed breath alcohol specimen is not required. This 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 paragraph (c) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

(d) If a person refuses to take or to complete, or to cooperate with the completing of, any test or tests as provided in [section 42-4-1301.1](#) and such person subsequently stands trial for 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.** Evidence acquired through an involuntary blood test pursuant to [section 42-4-1301.1\(3\)](#) shall be admissible in any prosecution for DUI, DUI per se, DWAI, habitual user, or UDD, and 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.** Strict compliance with 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.

COLORADO DUI/DWAI LAWS

(h) In any trial for a violation 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)(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 this section and whether to administer a test pursuant to [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 this section. The results of such preliminary screening test shall be made available to the driver or the driver's attorney on request.

(7) **Penalties.** (a)(I) Except as otherwise provided in subparagraphs (II) and (IV) of this paragraph (a), every person who is convicted of 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 the court's discretion, a fine of not less than three hundred dollars nor more than one thousand dollars; and

(C) Not less than forty-eight hours nor more than ninety-six hours of useful public service, the performance of the minimum period of which shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(II) Upon conviction of a violation described in sub-subparagraph (A) or (B) of subparagraph (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

COLORADO DUI/DWAI LAWS

(B) In the court's discretion, a fine of not less than five hundred dollars nor more than one thousand five hundred dollars; and

(C) Not less than sixty hours nor more than one hundred twenty hours of useful public service, the performance of the minimum period of which shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(III) Subparagraph (II) of this paragraph (a) shall apply to:

(A) A 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, for DUI, DUI per se, or habitual user, or for vehicular homicide pursuant to [section 18-3-106\(1\)\(b\)\(I\), C.R.S.](#), 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\(4\)\(b\)](#); or

(B) A conviction for DUI, DWAI, or DUI per se when the person's BAC was 0.20 or more at the time of driving or within two hours after driving.

(IV) Upon a 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, 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 the court's discretion, a fine of not less than four hundred fifty dollars nor more than one thousand five hundred dollars; and

(C) 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.

(b)(I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (b), every person who is convicted of 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 the court's discretion, a fine of not less than one hundred dollars nor more than five hundred dollars; and

(C) Not less than twenty-four hours nor more than forty-eight hours of useful public service, the

COLORADO DUI/DWAI LAWS

performance of the minimum period of which shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(II) Upon conviction of a second or subsequent 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 the court's discretion, a fine of not less than three hundred dollars nor more than one thousand dollars; and

(C) Not less than forty-eight hours nor more than ninety-six hours of useful public service, the performance of the minimum period of which shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(III) Upon conviction for DWAI, which violation occurred at any time after the date of a previous violation, for which there has been a conviction, for DUI, DUI per se, or habitual user, or vehicular homicide pursuant to [section 18-3-106\(1\)\(b\)\(I\), C.R.S.](#), 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 the court's discretion, a fine of not less than four hundred dollars nor more than one thousand two hundred dollars; and

(C) Not less than fifty-two hours nor more than one hundred four hours of useful public service, the performance of the minimum period of which shall be mandatory, and the court shall have no discretion to suspend the mandatory minimum period of performance of such service.

(IV) Deleted by Laws 2002, Ch. 342, § 2, eff. July 1, 2002.

(c)(I) For the purposes of paragraphs (a) and (b) of this subsection (7), a person shall be deemed to have a previous conviction for DUI, DUI per se, DWAI, or habitual user, or vehicular homicide pursuant to [section 18-3-106\(1\)\(b\)\(I\), C.R.S.](#), 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 that, if committed within this state, would constitute the offense of DUI, DUI per se, DWAI, or habitual user, or vehicular homicide pursuant to [section 18-3-106\(1\)\(b\)\(I\), C.R.S.](#), or vehicular assault pursuant to [section 18-3-205\(1\)\(b\)\(I\), C.R.S.](#)

(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

COLORADO DUI/DWAI LAWS

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, 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) As used in this part 13, "convicted" includes a plea of no contest accepted by the court.

(d) In addition to the penalties prescribed in this subsection (7):

(I) Persons convicted of 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 DUI, DUI per se, DWAI, and habitual user are subject to an additional penalty surcharge of not less than fifty dollars and not more than five hundred dollars for programs to address persistent drunk drivers. The minimum penalty surcharge shall be mandatory, and the court shall have no discretion to suspend or waive the surcharge; except that the court may suspend or waive the surcharge for a defendant determined by the court to be indigent. 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 42-3-303](#).

(III) Persons convicted of DUI, DUI per se, DWAI, habitual user, and UDD are subject to a surcharge of fifteen dollars to be transmitted to the state treasurer who shall deposit said surcharges in the Colorado traumatic brain injury trust fund created pursuant to [section 26-1-309, C.R.S.](#)

(e) 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; in addition, a court may also sentence a defendant who is twice or more convicted pursuant to this section to a period of probation not to exceed two additional years for the purpose of monitoring compliance with court orders. As a condition of probation, the defendant shall be required to make restitution in accordance with the provisions of [section 18-1.3-205, C.R.S.](#)

(f) 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) In addition to any fines, fees, or costs levied against a person convicted of 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 one hundred twenty dollars, upon any person required to perform useful public service.

COLORADO DUI/DWAI LAWS

(8) A second or subsequent violation of this section committed by a person under eighteen years of age may be filed in juvenile court.

§ 42-4-1301.1.

EXPRESSED CONSENT FOR THE TAKING OF BLOOD, BREATH, URINE, OR SALIVA SAMPLE-- TESTING

(1) 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 section.

(2)(a)(I) A person who drives a 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 the 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 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 the test be a blood test, then the test shall be of his or her blood; but, if the person requests that a specimen of his or her blood not be drawn, then a specimen of the 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 UDD, in which case a specimen of the person's breath shall be obtained and tested, except as provided in subparagraph (II) of this paragraph (a).

(II) Except as otherwise provided in paragraph (a.5) of this subsection (2), if a person elects either a blood test or a breath test, the person shall not be permitted to change the election, and, if the person fails to take and complete, and to cooperate in the completing of, the test elected, the failure shall be deemed to be a refusal to submit to testing. If the 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 the 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 the person's blood.

(III) If a law enforcement officer requests a test under 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.

(a.5)(I) If a law enforcement officer who requests a person to take a breath or blood test under paragraph (a) of this subsection (2) determines there are extraordinary circumstances that prevent the completion of the test elected by the person within the two-hour time period required by subparagraph (III) of paragraph (a) of this subsection (2), the officer shall inform the person of the extraordinary circumstances and request and direct the person to take and complete the other test described in paragraph (a) of this subsection (2). The person shall then be required to take and complete, and to cooperate in the completing of, the other test.

(II) A person who initially requests and elects to take a blood or breath test, but who is requested and directed by the law enforcement officer to take the other test because of the extraordinary circumstances described in subparagraph (I) of this paragraph (a.5), may change his or her election for the purpose of complying with the officer's request. The change in the election of which test to take shall not be deemed

COLORADO DUI/DWAI LAWS

to be a refusal to submit to testing.

(III) If the person fails to take and complete, and to cooperate in the completing of, the other test requested by the law enforcement officer pursuant to subparagraph (I) of this paragraph (a.5), the failure shall be deemed to be a refusal to submit to testing.

(IV)(A) As used in this paragraph (a.5), "extraordinary circumstances" means circumstances beyond the control of, and not created by, the law enforcement officer who requests and directs a person to take a blood or breath test in accordance with this subsection (2) or the law enforcement authority with whom the officer is employed.

(B) "Extraordinary circumstances" includes, but shall not be limited to, weather-related delays, high call volume affecting medical personnel, power outages, malfunctioning breath test equipment, and other circumstances that preclude the timely collection and testing of a blood or breath sample by a qualified person in accordance with law.

(C) "Extraordinary circumstances" does not include inconvenience, a busy workload on the part of the law enforcement officer or law enforcement authority, minor delay that does not compromise the two-hour test period specified in subparagraph (III) of paragraph (a) of this subsection (2), or routine circumstances that are subject to the control of the law enforcement officer or law enforcement authority.

(b)(I) 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 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) 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 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.](#), 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.

COLORADO DUI/DWAI LAWS

(4) Any driver of a commercial motor vehicle requested to submit to a test as provided in 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) 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 [section 42-4-1301](#) and in accordance with rules and regulations prescribed by the department of public health and environment concerning the health of the person being tested and the accuracy of such testing.

(6)(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.

(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 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 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) 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 subsection (2) of this section.

(8) 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 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 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 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) If a person refuses to take, or to complete, or to cooperate with the completing of any test or tests as provided in [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 that may be provided for by law, including any suspension, revocation, or denial that results from a conviction of criminal charges arising out of the same occurrence for a violation of [section 42-4-1301](#). The remainder of any suspension,

COLORADO DUI/DWAI LAWS

or denial in lieu of suspension, stayed pursuant to the provisions of this 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 that the department is required to take in the administration of the provisions of this title.

(2) A person convicted of 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 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) 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 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)(I) The sentence of any person subject to the provisions of [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 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.

(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) 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.

(3)(a) The judicial department shall administer in each judicial district an alcohol and drug driving safety

COLORADO DUI/DWAI LAWS

program that provides presentence and postsentence alcohol and drug evaluations on all persons convicted of a violation of [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 this section.

(c)(I) An alcohol and drug evaluation shall be conducted on all persons convicted of a violation of [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 subsection (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 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) 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). 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 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

COLORADO DUI/DWAI LAWS

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 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 section and shall not revert or transfer to the general fund except by further act of the general assembly.

(b) 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) 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 section shall not apply to persons who are not residents of Colorado at the time of sentencing.

(d) Notwithstanding any provision of paragraph (a) of this subsection (4) to the contrary, on March 5, 2003, the state treasurer shall deduct one million dollars from the alcohol and drug driving safety program fund and transfer such sum to the general fund.

(5) The provisions of this section are also applicable to any defendant who receives a deferred prosecution in accordance with [section 18-1.3-101, C.R.S.](#), or who receives a deferred sentence in accordance with [section 18-1.3-102, 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--DEFINITIONS--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) For the purposes of this section and [section 42-4-1301](#), "useful public service" means any work that is beneficial to the public and involves a minimum of direct supervision or other public cost. "Useful public service" does not include any work that would endanger the health or safety of any person convicted of a violation of any of the offenses specified in [section 42-4-1301](#).

(b) 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) There may be established in the probation department of each judicial district in the state a useful

COLORADO DUI/DWAI LAWS

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 or charitable trusts, 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) Any general public liability insurance policy obtained pursuant to this 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) 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 [section 42-4-1301](#) to participate in any type of useful public service.

(c) 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 [section 42-4-1301](#) to participate in any type of useful public service, but nothing in this 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) In accordance with [section 42-4-1301\(7\)\(h\)](#), 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.

(6) The provisions of this section relating to the performance of useful public service are also applicable to any defendant who receives a deferred prosecution in accordance with [section 18-1.3-101, C.R.S.](#), or who receives a deferred sentence in accordance with [section 18-1.3-102, 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.

STATUTES CAN BE RESEARCHED IN LEXISNEXIS AT THE FOLLOWING SITE:
<http://198.187.128.12/colorado/lpext.dll?f=templates&fn=fs-main.htm&2.0>