

§ 42-4-1307. [Effective 8/5/2015] Penalties for traffic offenses involving alcohol and drugs - legislative declaration - definitions - repeal.

## Colorado Statutes

### Title 42. VEHICLES AND TRAFFIC

#### REGULATION OF VEHICLES AND TRAFFIC

#### Article 4. Regulation of Vehicles and Traffic

#### Part 13. ALCOHOL AND DRUG OFFENSES

*Current through Chapter 364 of the 2015 Legislative Session*

### § 42-4-1307. [Effective 8/5/2015] Penalties for traffic offenses involving alcohol and drugs - legislative declaration - definitions - repeal

- (1) **Legislative declaration.** The general assembly hereby finds and declares that, for the purposes of sentencing as described in section 18-1-102.5, C.R.S., each sentence for a conviction of a violation of section 42-4-1301 shall include:
  - (a) A period of imprisonment, which, for a repeat offender, shall include a mandatory minimum period of imprisonment and restrictions on where and how the sentence may be served; and
  - (b) For a second or subsequent offender, a period of probation. The imposition of a period of probation upon the conviction of a first-time offender shall be subject to the court's discretion as described in paragraph (c) of subsection (3) and paragraph (c) of subsection (4) of this section. The purpose of probation is to help the offender change his or her behavior to reduce the risk of future violations of section 42-4-1301. If a court imposes imprisonment as a penalty for a violation of a condition of his or her probation, the penalty shall constitute a separate period of imprisonment that the offender shall serve in addition to the imprisonment component of his or her original sentence.
- (2) **Definitions.** As used in this section, unless the context otherwise requires:
  - (a) "Approved ignition interlock device" has the same meaning as set forth in section 42-2-132.5.
  - (b) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court for an offense or adjudication for an offense that would constitute a criminal offense if committed by an adult. "Conviction" also includes having received a deferred judgment and sentence or deferred adjudication; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence or deferred adjudication.
  - (c) "Driving under the influence" or "DUI" means driving a motor vehicle or vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, that affects the person to a degree that the person

is substantially incapable, either mentally or physically, or both mentally and physically, of exercising clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

- (d) "Driving while ability impaired" or "DWAII" means driving a motor vehicle or vehicle when a person has consumed alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, that 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.
- (e) "UDD" shall have the same meaning as provided in section 42-1-102 (109.7).

(3) **First offenses - DUI and DUI per se.**

- (a) Except as otherwise provided in subsections (5) and (6) of this section, a person who is convicted of DUI or DUI per se shall be punished by:
  - (I) Imprisonment in the county jail for at least five days but no more than one year, the minimum period of which shall be mandatory; except that the court may suspend the mandatory minimum period if, as a condition of the suspended sentence, the offender undergoes a presentence or postsentence alcohol and drug evaluation and satisfactorily completes and meets all financial obligations of a level I or level II program as is determined to be appropriate by the alcohol and drug evaluation that is required pursuant to section 42-4-1301.3 ;
  - (II) A fine of at least six hundred dollars but no more than one thousand dollars, and the court shall have discretion to suspend the fine; and
  - (III) At least forty-eight hours but no more than ninety-six hours of useful public service, and the court shall not have discretion to suspend the mandatory minimum period of performance of such service.
- (b) Notwithstanding the provisions of subparagraph (I) of paragraph (a) of this subsection (3), and except as described in paragraphs (a) and (b) of subsection (5) and paragraph (a) of subsection (6) of this section, a person who is convicted of DUI 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 shall be punished by imprisonment in the county jail for at least ten days but not more than one year; except that the court shall have the discretion to employ the sentencing alternatives described in section 18-1.3-106, C.R.S.
- (c) In addition to any penalty described in paragraph (a) of this subsection (3), the court may impose a period of probation that shall not exceed two years, which

probation may include any conditions permitted by law.

**(4) First offenses - DWAI.**

- (a) Except as otherwise provided in subsections (5) and (6) of this section, a person who is convicted of DWAI shall be punished by:
  - (I) Imprisonment in the county jail for at least two days but no more than one hundred eighty days, the minimum period of which shall be mandatory; except that the court may suspend the mandatory minimum period if, as a condition of the suspended sentence, the offender undergoes a presentence or postsentence alcohol and drug evaluation and satisfactorily completes and meets all financial obligations of a level I or level II program as is determined to be appropriate by the alcohol and drug evaluation that is required pursuant to section 42-4-1301.3 ; and
  - (II) A fine of at least two hundred dollars but no more than five hundred dollars, and the court shall have discretion to suspend the fine; and
  - (III) At least twenty-four hours but no more than forty-eight hours of useful public service, and the court shall not have discretion to suspend the mandatory minimum period of performance of such service.
- (b) Notwithstanding the provisions of subparagraph (I) of paragraph (a) of this subsection (4), and except as described in paragraphs (a) and (b) of subsection (5) and paragraph (a) of subsection (6) of this section, a person who is convicted of DWAI when the person's BAC was 0.20 or more at the time of driving or within two hours after driving shall be punished by imprisonment in the county jail for at least ten days but not more than one year; except that the court shall have the discretion to employ the sentencing alternatives described in section 18-1.3-106, C.R.S.
- (c) In addition to any penalty described in paragraph (a) of this subsection (4), the court may impose a period of probation that shall not exceed two years, which probation may include any conditions permitted by law.

**(5) Second offenses.**

- (a) Except as otherwise provided in subsection (6) of this section, a person who is convicted of DUI, DUI per se, or DWAI who, at the time of sentencing, has a prior conviction of DUI, DUI per se, DWAI, vehicular homicide pursuant to section 18-3-106(1) (b), C.R.S., vehicular assault pursuant to section 18-3-205(1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206(1) (b) (I) (A) or (1) (b) (I) (B), as that crime existed before the effective date of House Bill 15-1043, as enacted in 2015, or driving while the person's driver's license was under restraint pursuant to section 42-2-138(1) (d), shall be punished by:

- (I) Imprisonment in the county jail for at least ten consecutive days but no more than one year; except that the court shall have discretion to employ the sentencing alternatives described in section 18-1.3-106, C.R.S. During the mandatory ten-day period of imprisonment, the person shall not be eligible for earned time or good time pursuant to section 17-26-109, C.R.S., or for trusty prisoner status pursuant to section 17-26-115, C.R.S.; except that the person shall receive credit for any time that he or she served in custody for the violation prior to his or her conviction.
  - (II) A fine of at least six hundred dollars but no more than one thousand five hundred dollars, and the court shall have discretion to suspend the fine;
  - (III) At least forty-eight hours but no more than one hundred twenty hours of useful public service, and the court shall not have discretion to suspend the mandatory minimum period of performance of the service; and
  - (IV) A period of probation of at least two years, which period shall begin immediately upon the commencement of any part of the sentence that is imposed upon the person pursuant to this section, and a suspended sentence of imprisonment in the county jail for one year, as described in subsection (7) of this section; except that the court shall not sentence the defendant to probation if the defendant is sentenced to the department of corrections but shall still sentence the defendant to the provisions of paragraph (b) of subsection (7) of this section. The defendant shall complete all court-ordered programs pursuant to paragraph (b) of subsection (7) of this section before the completion of his or her period of parole.
- (b) If a person is convicted of DUI, DUI per se, or DWAI and the violation occurred less than five years after the date of a previous violation for which the person was convicted of DUI, DUI per se, DWAI, vehicular homicide pursuant to section 18-3-106(1) (b), C.R.S., vehicular assault pursuant to section 18-3-205(1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206(1) (b) (I) (A) or (1) (b) (I) (B), as that crime existed before the effective date of House Bill 15-1043, as enacted in 2015, or driving while the person's driver's license was under restraint pursuant to section 42-2-138(1) (d), the court does not have discretion to employ any sentencing alternatives described in section 18-1.3-106, C.R.S., during the minimum period of imprisonment described in subparagraph (I) of paragraph (a) of this subsection (5); except that a court may allow the person to participate in a program pursuant to section 18-1.3-106(1) (a) (II), (1) (a) (IV), or (1) (a) (V), C.R.S., only if the program is available through the county in which the person is imprisoned and only for the purpose of:

- (I) Continuing a position of employment that the person held at the time of sentencing for said violation;
- (II) Continuing attendance at an educational institution at which the person was enrolled at the time of sentencing for said violation; or
- (III) Participating in a court-ordered level II alcohol and drug driving safety education or treatment program, as described in section 42-4-1301.3(3) (c) (IV).

(c) Notwithstanding the provisions of section 18-1.3-106(12), C.R.S., if, pursuant to paragraph (a) or (b) of this subsection (5), a court allows a person to participate in a program pursuant to section 18-1.3-106, C.R.S., the person shall not receive one day credit against his or her sentence for each day spent in such a program, as provided in said section 18-1.3-106(12), C.R.S.

**(6) Third and subsequent offenses.**

(a) Except as provided in section 42-4-1301 (1) (a), (1) (b), and (2) (a), a person who is convicted of DUI, DUI per se, or DWAI who, at the time of sentencing, has two or more prior convictions of DUI, DUI per se, DWAI, vehicular homicide pursuant to section 18-3-106(1) (b), C.R.S., vehicular assault pursuant to section 18-3-205(1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206(1) (b) (I) (A) or (1) (b) (I) (B), as that crime existed before the effective date of House Bill 15-1043, as enacted in 2015, or driving while the person's driver's license was under restraint pursuant to section 42-2-138(1) (d) shall be punished by:

(I) Imprisonment in the county jail for at least sixty consecutive days but no more than one year. During the mandatory sixty-day period of imprisonment, the person shall not be eligible for earned time or good time pursuant to section 17-26-109, C.R.S., or for trusty prisoner status pursuant to section 17-26-115, C.R.S.; except that a person shall receive credit for any time that he or she served in custody for the violation prior to his or her conviction. During the mandatory period of imprisonment, the court shall not have any discretion to employ any sentencing alternatives described in section 18-1.3-106, C.R.S.; except that the person may participate in a program pursuant to section 18-1.3-106(1) (a) (II), (1) (a) (IV), or (1) (a) (V), C.R.S., only if the program is available through the county in which the person is imprisoned and only for the purpose of:

- (A) Continuing a position of employment that the person held at the time of sentencing for said violation;
- (B) Continuing attendance at an educational institution at which the

person was enrolled at the time of sentencing for said violation; or

- (C) Participating in a court-ordered level II alcohol and drug driving safety education or treatment program, as described in section 42-4-1301.3(3) (c) (IV);
  - (II) A fine of at least six hundred dollars but no more than one thousand five hundred dollars, and the court shall have discretion to suspend the fine;
  - (III) At least forty-eight hours but no more than one hundred twenty hours of useful public service, and the court shall not have discretion to suspend the mandatory minimum period of performance of the service; and
  - (IV) A period of probation of at least two years, which period shall begin immediately upon the commencement of any part of the sentence that is imposed upon the person pursuant to this section, and a suspended sentence of imprisonment in the county jail for one year, as described in subsection (7) of this section; except that the court shall not sentence the defendant to probation if the defendant is sentenced to the department of corrections, but shall still sentence the defendant to the provisions of paragraph (b) of subsection (7) of this section. The defendant shall complete all court-ordered programs pursuant to paragraph (b) of subsection (7) of this section before the completion of his or her period of parole.
- (b) Notwithstanding the provisions of section 18-1.3-106(12), C.R.S., if, pursuant to paragraph (a) of this subsection (6), a court allows a person to participate in a program pursuant to section 18-1.3-106(1) (a) (II), (1) (a) (IV), or (1) (a) (V), C.R.S., the person shall not receive one day credit against his or her sentence for each day spent in such a program, as provided in said section 18-1.3-106(12), C.R.S.
- (c) Notwithstanding any other provision of law, if the defendant satisfies the conditions described in subparagraphs (I), (II), and (III) of this paragraph (c), the court may include as a condition of probation a requirement that the defendant participate in alcohol treatment. If the defendant's assessed treatment need is for residential treatment, the court may make residential alcohol treatment a condition of probation and may place the offender in a community corrections program that can provide the appropriate level of treatment. This paragraph (c) applies only if:
- (I) At the time of sentencing, the person has two prior convictions of DUI, DUI per se, DWAI, vehicular homicide pursuant to section 18-3-106 (1) (b), C.R.S., or vehicular assault pursuant to section 18-3-205 (1) (b), C.R.S.; and

- (II) The first of the person's two prior convictions was based on a violation that occurred not more than seven years before the violation for which the person is being sentenced.

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

- (a) The court shall impose a sentence to one year of imprisonment in the county jail, which sentence shall be suspended, and against which sentence the person shall not receive credit for any period of imprisonment to which he or she is sentenced pursuant to subparagraph (I) of paragraph (a) of subsection (5) of this section or subparagraph (I) of paragraph (a) of subsection (6) of this section;
- (b) The court:
  - (I) Shall include, as a condition of the person's probation, a requirement that the person complete a level II alcohol and drug driving safety education or treatment program, as described in section 42-4-1301.3(3) (c) (IV), at the person's own expense;
  - (II) May impose an additional period of probation for the purpose of monitoring the person or ensuring that the person continues to receive court-ordered alcohol or substance abuse treatment, which additional period shall not exceed two years;
  - (III) May require that the person commence the alcohol and drug driving safety education or treatment program described in subparagraph (I) of this paragraph (b) during any period of imprisonment to which the person is sentenced;
  - (IV) May require the person to appear before the court at any time during the person's period of probation;
  - (V) May require the person to use an approved ignition interlock device during the period of probation at the person's own expense;
  - (VI) May require the person to submit to continuous alcohol monitoring using such technology or devices as are available to the court for such purpose; and
  - (VII) May impose such additional conditions of probation as may be permitted by law.
- (c) (I) The court may impose all or part of the suspended sentence described in

subparagraph (IV) of paragraph (a) of subsection (5) of this section or subparagraph (IV) of paragraph (a) of subsection (6) of this section at any time during the period of probation if the person violates a condition of his or her probation. During the period of imprisonment, the person shall continue serving the probation sentence with no reduction in time for the sentence to probation. A cumulative period of imprisonment imposed pursuant to this paragraph (c) shall not exceed one year. In imposing a sentence of imprisonment pursuant to paragraph (a) of this subsection (7), the court shall consider the nature of the violation, the report or testimony of the probation department, the impact on public safety, the progress of the person in any court-ordered alcohol and drug driving safety education or treatment program, and any other information that may assist the court in promoting the person's compliance with the conditions of his or her probation.

(II) Any imprisonment imposed upon a person by the court pursuant to paragraph (a) of this subsection (7) must be imposed in a manner that promotes the person's compliance with the conditions of his or her probation and not merely as a punitive measure.

(d) The prosecution, the person, the person's counsel, or the person's probation officer may petition the court at any time for an early termination of the period of probation, which the court may grant upon a finding of the court that:

(I) The person has successfully completed a level II alcohol and drug driving safety education or treatment program pursuant to subparagraph (I) of paragraph (b) of this subsection (7);

(II) The person has otherwise complied with the terms and conditions of his or her probation; and

(III) Early termination of the period of probation will not endanger public safety.

(8) **Ignition interlock devices.** In sentencing a person pursuant to this section, courts are encouraged to require the person to use an approved ignition interlock device as a condition of bond, probation, and participation in programs pursuant to section 18-1.3-106, C.R.S.

(9) **Previous convictions.**

(a) For the purposes of subsections (5) and (6) of this section, a person is deemed to have a previous conviction for DUI, DUI per se, DWAI, vehicular homicide pursuant to section 18-3-106(1) (b), C.R.S., vehicular assault pursuant to section 18-3-205(1) (b), C.R.S., aggravated driving with a revoked license pursuant to section



42-2-206(1) (b) (I) (A) or (1) (b) (I) (B), as that crime existed before the effective date of House Bill 15-1043, as enacted in 2015, or driving while the person's driver's license was under restraint pursuant to section 42-2-138(1) (d), if the person has been convicted under the laws of this state or 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, vehicular homicide pursuant to section 18-3-106(1) (b), C.R.S., vehicular assault pursuant to section 18-3-205(1) (b), C.R.S., aggravated driving with a revoked license pursuant to section 42-2-206(1) (b) (I) (A) or (1) (b) (I) (B), as that crime existed before the effective date of House Bill 15-1043, as enacted in 2015, or driving while the person's driver's license was under restraint pursuant to section 42-2-138(1) (d).

- (b) (I) For sentencing purposes concerning convictions for second and subsequent offenses, prima facie proof of a person's previous convictions shall be established when:
  - (A) The prosecuting attorney and the person stipulate to the existence of the prior conviction or convictions;
  - (B) The prosecuting attorney presents to the court a copy of the person's driving record provided by the department of revenue or by a similar agency in another state, which record contains a reference to the previous conviction or convictions; or
  - (C) The prosecuting attorney presents an authenticated copy of the record of the previous conviction or judgment from a 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.
- (II) The court shall not proceed to immediate sentencing if the prosecuting attorney and the person have not stipulated to previous convictions or if the prosecution has requested 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.

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

- (a) Persons convicted of DUI, DUI per se, DWAI, 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;
- (b) Persons convicted of DUI, DUI per se, and DWAI are subject to a surcharge of at least one hundred dollars but no more than five hundred dollars to fund programs

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

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

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

(II) This paragraph (d) is repealed, effective July 1, 2016, unless the general assembly extends the repeal of the rural alcohol and substance abuse prevention and treatment program created in section 27-80-117, C.R.S.

(11) **Restitution.** As a condition of any sentence imposed pursuant to this section, the sentenced person shall be required to make restitution in accordance with the provisions of section 18-1.3-205, C.R.S.

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

(13) **Alcohol and drug evaluation and supervision costs.** In addition to any fines, fees, or costs levied against a person convicted of DUI, DUI per se, DWAI, or UDD, the judge shall assess each such person for the cost of the presentence or postsentence alcohol and drug evaluation and supervision services.

(14) **Public service penalty.** 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 a person required to perform useful public service.

- (15) If a defendant is convicted of aggravated driving with a revoked license based upon the commission of DUI, DUI per se, or DWAI pursuant to section 42-2-206(1) (b) (I) (A) or (1) (b) (I) (B), as that crime existed before the effective date of this House Bill 15-1043, as enacted in 2015:
- (a) The court shall convict and sentence the offender for each offense separately;
  - (b) The court shall impose all of the penalties for the alcohol-related driving offense, as such penalties are described in this section;
  - (c) The provisions of section 18-1-408, C.R.S., shall not apply to the sentences imposed for either conviction;
  - (d) Any probation imposed for a conviction under section 42-2-206 may run concurrently with any probation required by this section; and
  - (e) The department shall reflect both convictions on the defendant's driving record.

**Cite as C.R.S. § 42-4-1307**

**History.** Amended by 2015 Ch. 262, §2, eff. 8/5/2015.

Amended by 2013 Ch. 331, §15, eff. 5/28/2013.

L. 2010: Entire section added, (HB10-1347), ch. 258, p. 1149, §2, effective July 1. L. 2011: (1)(b), (3)(a)(I), (3)(a)(II), (4)(a)(I), (4)(a)(II), (5)(a)(II), (6)(a)(II), (7)(b)(II), and (11) amended, (HB11-1268), ch. 267, p. 1218, §2, effective June 2. L. 2012: (5)(a)(IV) and (6)(a)(IV) amended, (HB12-1310), ch. 268, p. 1401, §21, effective June 7; (7)(b)(V) and (8) amended, (HB12-1168), ch. 278, p. 1484, §8, effective August 8.

**Note:** 2015 Ch. 262, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

**Note:** *This section is set out twice. See also C.R.S. § 42-4-1307 , effective until 8/5/2015.*

**Case Notes:**

**ANNOTATION**

**Annotator's note.** For annotations relating to penalties for traffic offenses involving alcohol and drugs, formerly found in § 42-4-1301(7) prior to the 2010 repeal of that subsection and now found in this section, see the annotations for § 42-4-1301 .

**Under the definition of "conviction"** in subsection (2)(a), the reference to deferred adjudication does not overcome the prohibition against sealing the record of a "conviction" pursuant to § 24-72-308(3)(a)(III). In re Harte, 2012 COA 183, \_\_ P.3d \_\_.