



FY2010 RECOMMENDATION/FY10-D11 PROPOSED DUI SENTENCING REVISIONS

Status: Implementation Complete

Actions/Updates

2012 ACTION/IMPLEMENTATION

These recommendations became HB10-1347. The following year HB11-1268 was used to correct the unintended consequences of HB 10-1347.

Description

First DUI Offense

D11A. No changes to penalties for the 1st DUI offense.

Second DUI Offense

D11B. For all 2nd DUI offenses, the court must impose an initial minimum jail sentence of 10 consecutive days, up to one year.

D11C. At least 10 consecutive days must be served. This minimum sentence shall not be suspended and the offender is not eligible for earned time, good time, or trustee status. If work release is granted pursuant to this provision then the offender is not eligible for day-for-day credit on work release (C.R.S. 18-1.3-106)

D11D. Credit for time served while in custody for the offense prior to conviction is mandatory. If the offender only receives the minimum 10 consecutive days in jail then pretrial confinement will be credited against that period.

D11E. A mandatory probation period of 2 years and 1 year of jail suspended must be imposed in addition to the initial jail sentence.

D11F. Any time served during the initial sentence to jail shall not be credited against the 1 year of jail suspended as a condition of probation.

D11G. Imposition of jail sentences or other sanctions for violations of probation may be done incrementally, but cannot exceed an aggregate of 1 year. The court shall consider the level of severity of any violation when imposing any sanction.

D11H. Work release is allowed for existing job, education and court ordered treatment for the first 10 days on a 2nd offense.

D11I. Between 48 and 120 hours of public service is required.

D11J. A fine of \$600-\$1500 is required. However, this can be waived or suspended at judicial discretion.

D11K. If a 2nd DUI offense is committed on or before 5 years of the date of offense for a prior DUI offense, then no alternative sentence shall be imposed (e.g., in-home detention).

D11L. However, once the minimum of 10 consecutive days is served the court may impose an alternative sentence.

D11M. If a 2nd DUI offense is committed beyond 5 years of the date of offense for a prior DUI offense, then the offender shall be sentenced to jail for 10 days, up to one year, or an alternative sentence may be imposed (e.g., in-home detention). The consecutive requirement does not apply to this section.

Third and Subsequent DUI Offenses

D11N. For all 3rd and subsequent DUI offenses the court must impose an initial minimum jail sentence of 60 consecutive days, up to one year.

D11O. At least 60 consecutive days must be served. This minimum sentence shall not be suspended and the offender is not eligible for earned time, good time, or trustee status. If work release is granted pursuant to this provision then the offender is not eligible for day for day credit on work release (C.R.S. 18-1.3-106)

D11P. Credit for time served while in custody for the offense prior to conviction is mandatory.

D11Q. A mandatory probation period of 2 years and 1 year of jail suspended must be imposed in addition to the initial jail sentence.

D11R. Any time served during the initial sentence to jail shall not be credited against the 1 year of jail suspended as a condition of probation.

D11S. Imposition of jail sentences or other sanctions for violations of probation may be done incrementally, but cannot exceed an aggregate of 1 year. The court shall consider the level of severity of any violation when imposing any sanction.

D11T. Work release is allowed for existing job, education and court ordered treatment for the first 60 consecutive days on a 3rd offense.

D11U. No alternative sentence shall be imposed (e.g., in-home detention).

D11V. However, once the minimum of 60 consecutive days is served the court may impose an alternative sentence.

D11W. Between 48 and 120 hours of public service is required.

D11X. A fine of \$600-\$1500 is required. However, this can be waived or suspended at judicial discretion.

D11Y. If a 3rd DUI offense is committed on or before 7 years of the date of offense for a prior DUI offense, then 60 consecutive days in jail must be served, work release is not allowed and no alternative sentence shall be imposed (e.g., in-home detention).

D11Z. To be written as a preamble.* The legislature recognizes that the court has the authority and encourages the use of sanctions in addition to a jail sentence as conditions of probation for any DUI offense. This includes, but is not limited to, wearing a continuous alcohol monitoring device, in-home detention during probation, and/or mandatory ignition interlock device even while license is under suspension.

Probation

D11AA. A mandatory minimum of two years probation for second and subsequent offenses must be imposed as a separate component of the sentence. This probationary period will commence immediately upon sentencing. The judge may impose up to an additional two years of probation, if necessary, for further monitoring and treatment.

D11BB. In addition to the initial jail sentence the court shall impose and suspend 1 year of jail as a condition of probation.

D11CC. The initial sentence to jail is not credited against probationary jail time.

D11DD. Any alcohol and/or drug education or treatment ordered must be done by an approved provider.

D11EE. Court ordered treatment must be completed before the offender may be released from probation. The court may mandate that this treatment begin during any sentence to incarceration.

D11FF. The prosecution, defendant, defendant's counsel, or probation officer may petition the court for early termination of probation by demonstrating substantial compliance with all terms and conditions of probation, successful completion of approved alcohol and/or drug treatment, and that the termination of probation will not endanger public safety.

**The Drug Policy Task Force approved D11Z as a potential preamble to the statute. However, the bill was drafted with specific language in the legislative declarations and in the body of the bill that encourages the use of an approved ignition interlock device as defined in C.R.S. 42-2-132.5(7)(a).*

Agencies Responsible

Discussion

Points of clarification

- *The provisions of C.R.S. § 42-4-1301 (7)(c)(II) still apply. This means that repeat offenses do not have to be pled (i.e., repeat DUI offenders, 2nd and subsequent, do not have to be pled).*
- *The provisions of C.R.S. § 16-5-402, which provide for limitations of collateral attacks, still apply (i.e., 18 month limit for misdemeanors).*