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# An Act

HOUSE BILL 10-1347

BY REPRESENTATIVE(S) Levy, Apuan, Court, Curry, Ferrandino, Frangas, Gardner B., Gardner C., Hullinghorst, Kagan, McCann, Nikkel, Peniston, Pommer, Primavera, Schafer S., Waller, King S., Massey, Rice, Tipton, Vigil;  
also SENATOR(S) Morse, Newell.

CONCERNING MISDEMEANOR PENALTIES FOR PERSONS WHO ARE CONVICTED OF MULTIPLE TRAFFIC OFFENSES INVOLVING ALCOHOL OR DRUGS, AND MAKING AN APPROPRIATION THEREFOR.

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

**SECTION 1. Repeal.** 42-4-1301 (7), Colorado Revised Statutes, is repealed.

**SECTION 2.** Part 13 of article 4 of title 42, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**42-4-1307. Penalties for traffic offenses involving alcohol and drugs - 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:

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(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) A PERIOD OF PROBATION. 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) "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.

(b) "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.

(c) "DRIVING WHILE ABILITY IMPAIRED" OR "DWAI" 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.

(d) "UDD" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION 42-1-102 (109.7).

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

(a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (5) AND (6) OF THIS SECTION, A PERSON WHO IS CONVICTED OF DUI, DUI PER SE, OR HABITUAL USER 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 AS OTHERWISE PROVIDED IN SECTION 42-4-1301.3;

(II) A FINE OF AT LEAST SIX HUNDRED DOLLARS BUT NO MORE THAN ONE THOUSAND DOLLARS; 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 AS PROVIDED IN SECTION 42-4-1301.3; AND

(II) A FINE OF AT LEAST TWO HUNDRED DOLLARS BUT NO MORE THAN FIVE HUNDRED DOLLARS; 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 (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 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, DWAI, OR HABITUAL USER WHO, AT THE TIME OF SENTENCING, HAS A PRIOR CONVICTION OF DUI, DUI PER SE, DWAI, HABITUAL USER, 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), 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;

(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.

(b) IF A PERSON IS CONVICTED OF DUI, DUI PER SE, DWAI, OR HABITUAL USER 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, HABITUAL USER, 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), OR DRIVING WHILE THE PERSON'S DRIVER'S LICENSE WAS UNDER RESTRAINT PURSUANT TO SECTION 42-2-138 (1) (d), THE COURT SHALL 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 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) A PERSON WHO IS CONVICTED OF DUI, DUI PER SE, DWAI, OR HABITUAL USER WHO, AT THE TIME OF SENTENCING, HAS TWO OR MORE PRIOR CONVICTIONS OF DUI, DUI PER SE, DWAI, HABITUAL USER, 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), 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;

(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.

(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.

(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, IN ADDITION TO ANY OTHER CONDITION OF PROBATION, 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, AS DESCRIBED IN SUBSECTION (11) OF THIS SECTION;

(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, AS DEFINED IN SECTION 42-2-132.5 (7) (a), 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.

(II) IN IMPOSING A SENTENCE OF IMPRISONMENT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c), 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. ANY IMPRISONMENT IMPOSED UPON A PERSON BY THE COURT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) SHALL 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 DEFINED IN SECTION 42-2-132.5 (7) (a), 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 SHALL BE DEEMED TO HAVE A PREVIOUS CONVICTION FOR DUI, DUI PER SE, DWAI, HABITUAL USER, 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), 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, HABITUAL USER, 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), 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, 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;

(b) PERSONS CONVICTED OF DUI, DUI PER SE, DWAI, AND HABITUAL USER 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, HABITUAL USER, 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, DWAI, AND HABITUAL USER 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 25-1-217 (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 25-1-217, C.R.S.

(11) **Additional probation.** IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, A COURT MAY SENTENCE A PERSON WHO IS TWICE OR MORE CONVICTED OF DUI, DUI PER SE, DWAI, HABITUAL USER, OR UDD TO A PERIOD OF PROBATION NOT TO EXCEED TWO ADDITIONAL YEARS TO MONITOR THE PERSON'S COMPLIANCE WITH COURT ORDERS. AS A CONDITION OF ANY SENTENCE TO PROBATION, THE 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, HABITUAL USER, 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, HABITUAL USER, 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):

(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.

**SECTION 3.** 42-2-206 (1) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

**42-2-206. Driving after revocation prohibited.** (1) (b) (III) 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 SUB-SUBPARAGRAPH (A) OR (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b):

(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 SECTION 42-4-1307;

(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 THIS SECTION MAY RUN CONCURRENTLY WITH ANY PROBATION REQUIRED BY SECTION 42-4-1307; AND

(E) THE DEPARTMENT SHALL REFLECT BOTH CONVICTIONS ON THE DEFENDANT'S DRIVING RECORD.

**SECTION 4.** 42-3-303 (1) (c) (II), Colorado Revised Statutes, is amended, and the said 42-3-303 is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

**42-3-303. Persistent drunk driver cash fund - programs to deter persistent drunk drivers.** (1) There is hereby created in the state treasury the persistent drunk driver cash fund, which shall be composed of moneys collected for penalty surcharges under section 42-4-1301 (7) (d) (II). The moneys in such fund are subject to annual appropriation by the general assembly:

(c) (II) The departments of transportation, revenue, and human services AND THE JUDICIAL BRANCH shall coordinate programs intended to accomplish the goals described in subparagraph (I) of this paragraph (c).

(e) TO ASSIST IN PROVIDING COURT-ORDERED ALCOHOL TREATMENT PROGRAMS FOR INDIGENT AND INCARCERATED OFFENDERS;

(f) TO ASSIST IN PROVIDING APPROVED IGNITION INTERLOCK DEVICES, AS DEFINED IN SECTION 42-2-132.5 (7) (a), FOR INDIGENT OFFENDERS; AND

(g) TO ASSIST IN PROVIDING CONTINUOUS MONITORING TECHNOLOGY OR DEVICES FOR INDIGENT OFFENDERS.

**SECTION 5.** The introductory portion to 42-4-1301.3 (2) (a) (I), Colorado Revised Statutes, is amended, and the said 42-4-1301.3 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**42-4-1301.3. Alcohol and drug driving safety program.**

(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)~~ 42-4-1307 may be suspended to the extent provided for in said section if the offender:

(6) AN APPROVED ALCOHOL OR DRUG TREATMENT FACILITY THAT PROVIDES LEVEL I OR LEVEL II PROGRAMS AS PROVIDED IN PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION SHALL NOT REQUIRE A PERSON TO REPEAT ANY PORTION OF AN ALCOHOL AND DRUG DRIVING SAFETY EDUCATION OR TREATMENT PROGRAM THAT HE OR SHE HAS SUCCESSFULLY COMPLETED WHILE HE OR SHE WAS IMPRISONED FOR THE CURRENT OFFENSE.

**SECTION 6.** 25-1-217 (3) (a), Colorado Revised Statutes, is amended to read:

**25-1-217. Rural alcohol and substance abuse prevention and treatment program - creation - administration - definitions - cash fund - repeal.** (3) (a) There is hereby created in the state treasury the rural alcohol and substance abuse cash fund, referred to in this section as the "fund", that shall consist of the rural youth alcohol and substance abuse prevention and treatment account, referred to in this section as the "youth account", and the rural detoxification account, referred to in this section as the "detoxification account". The fund shall be comprised of moneys collected from surcharges assessed pursuant to sections 18-19-103.5, ~~42-4-1301 (7) (d) (IV)~~ 42-4-1307 (10) (d) (I), and 42-4-1701 (4) (f), C.R.S., which moneys shall be divided equally between the youth account and the detoxification account, and any moneys credited to the fund pursuant to paragraph (b) of this subsection (3), which moneys shall be divided equally between the youth account and the detoxification account unless the grantee or donor specifies to which account the grant, gift, or donation shall be credited. The moneys in the fund shall be subject to annual appropriation by the general assembly to the division for the purpose of implementing the program. All interest derived from the deposit and investment of moneys in the fund shall remain in the fund. Any unexpended or unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be transferred or credited to the general fund or another

fund; except that any unexpended and unencumbered moneys remaining in the fund as of June 30, 2016, shall be credited to the general fund.

**SECTION 7.** 26-1-302 (8) (d), Colorado Revised Statutes, is amended to read:

**26-1-302. Colorado traumatic brain injury trust fund board - creation - powers and duties.** (8) (d) The board shall use trust fund moneys collected pursuant to sections 30-15-402 (3), ~~42-4-1301 (7) (d) (HH)~~ 42-4-1307 (10) (c) , and 42-4-1701 (4) (e), C.R.S., to provide direct services to persons with traumatic brain injuries, support research, and support education grants to increase awareness and understanding of issues and needs related to traumatic brain injury.

**SECTION 8.** 26-1-304 (1), Colorado Revised Statutes, is amended to read:

**26-1-304. Services for persons with traumatic brain injuries - limitations - covered services.** (1) The board shall determine the percentage of moneys credited to the trust fund to be spent annually on direct services for persons with traumatic brain injuries; however, no less than fifty-five percent of the moneys annually credited to the trust fund pursuant to sections 30-15-402 (3), ~~42-4-1301 (7) (d) (HH)~~ 42-4-1307 (10) (c), and 42-4-1701 (4) (e), C.R.S., shall be used to provide direct services to persons with traumatic brain injuries.

**SECTION 9.** 26-1-305, Colorado Revised Statutes, is amended to read:

**26-1-305. Education about traumatic brain injury.** The board shall determine the percentage of moneys credited to the trust fund to be spent annually on education related to traumatic brain injuries; however, no less than five percent of the moneys annually credited to the trust fund pursuant to sections 30-15-402 (3), ~~42-4-1301 (7) (d) (HH)~~ 42-4-1307 (10) (c), and 42-4-1701 (4) (e), C.R.S., shall be used to provide education related to increasing the understanding of traumatic brain injury.

**SECTION 10.** 26-1-306 (1), Colorado Revised Statutes, is amended to read:



**26-1-306. Research related to treatment of traumatic brain injuries - grants.** (1) The board shall determine the percentage of moneys credited to the trust fund to be spent annually on research related to traumatic brain injuries; however, no less than twenty-five percent of the moneys annually credited to the trust fund pursuant to sections 30-15-402 (3), ~~42-4-1301 (7) (d) (H)~~ 42-4-1307 (10) (c), and 42-4-1701 (4) (e), C.R.S., shall be used to support research related to the treatment and understanding of traumatic brain injuries.

**SECTION 11.** 26-1-309 (1), Colorado Revised Statutes, is amended to read:

**26-1-309. Trust fund.** (1) There is hereby created in the state treasury the Colorado traumatic brain injury trust fund. The trust fund shall consist of any moneys collected from surcharges assessed pursuant to sections 30-15-402 (3), ~~42-4-1301 (7) (d) (H)~~ 42-4-1307 (10) (c), and 42-4-1701 (4) (e), C.R.S. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs associated with the implementation of this part 3.

**SECTION 12.** 43-4-402 (1), Colorado Revised Statutes, is amended to read:

**43-4-402. Source of revenues - allocation of moneys.** (1) The general assembly shall appropriate moneys annually to the fund in the general appropriation bill. In addition to any other penalty imposed pursuant to ~~section 42-4-1301~~ SECTION 42-4-1307, C.R.S., every person who is convicted of, pleads guilty to, or receives a deferred sentence pursuant to section 18-1.3-102, C.R.S., for a violation of any of the offenses specified in section 42-4-1301 (1) or (2), C.R.S., shall be required to pay seventy-five dollars, which shall be deposited into the fund, and fifteen dollars, which shall be deposited into the county treasury of the county in which the conviction occurred.

**SECTION 13. Appropriation.** (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department, probation and related services, for probation programs, for the fiscal year beginning July 1, 2010, the sum of four hundred thirty-eight thousand five hundred eighteen dollars (\$438,518) and 7.3 FTE, or so much thereof as

may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the persistent drunk driver cash fund created in section 42-3-303 (1), Colorado Revised Statutes, not otherwise appropriated, to the judicial department, probation and related services, for offender treatment and services, for the fiscal year beginning July 1, 2010, the sum of two hundred forty-nine thousand seven hundred fifty dollars (\$249,750) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(3) It is the intent of the general assembly that the general fund appropriation in subsection (1) of this section shall be derived from savings generated from the implementation of the provisions of House Bill 10-1338, as enacted during the Second Regular Session of the Sixty-seventh General Assembly.

**SECTION 14. Specified effective date - applicability.** (1) This act shall take effect July 1, 2010, and shall apply to offenses committed on or after said date; except that this act shall only take effect if:

(a) House Bill 10-1338 is enacted at the Second Regular Session of the Sixty-seventh General Assembly and becomes law; and

(b) The final fiscal estimate for House Bill 10-1338, as determined from the appropriations enacted in said bill, shows a net reduction in the amount of general fund revenues appropriated for the state fiscal year 2010-11, that is equal to or greater than the amount of the general fund appropriation made for the implementation of this act for the state fiscal year 2010-11, as reflected in section 11 of this act; and

(c) The staff director of the joint budget committee files written notice with the revisor of statutes no later than July 15, 2010, that the requirement set forth in paragraph (b) of this subsection (1) has been met.

**SECTION 15. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Terrance D. Carroll  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Brandon C. Shaffer  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

---

Karen Goldman  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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Bill Ritter, Jr.  
GOVERNOR OF THE STATE OF COLORADO