

State DUI Laws: Colorado

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: No

Colorado Revised Statutes

42-2-125. Mandatory revocation of license and permit

(1) The department shall immediately revoke the license or permit of any driver or minor driver upon receiving a record showing that such driver has:

(a) Been convicted of vehicular homicide or vehicular assault as described in sections 18-3-106 and 18-3-205, C.R.S., or of criminally negligent homicide as described in section 18-3-105, C.R.S., while driving a motor vehicle;

(b) Been convicted of driving a motor vehicle while under the influence of a controlled substance, as defined in section 12-22-303 (7), C.R.S., or while an habitual user of such a controlled substance;

(c) Been convicted of any felony in the commission of which a motor vehicle was used;

(d) Been convicted of failing to stop and render aid as required by sections 42-4-1601 and 42-4-1602 in the event of a motor vehicle accident resulting in the death or injury of another;

(e) Been convicted of perjury in the first or second degree or the making of a false affidavit or statement under oath to the department under any law relating to the ownership or operation of a motor vehicle;

(f) Been three times convicted of reckless driving of a motor vehicle for acts committed within a period of two years;

(g) (I) Been twice convicted of any offense provided for in section 42-4-1301 (1) or (2) (a) for acts committed within a period of five years;

(II) In the case of a minor driver, been convicted of an offense under section 42-4-1301 (1) or (2) (a) committed while such driver was under twenty-one years of age;

(g.5) In the case of a minor driver, been convicted of an offense under section 42-4-1301 (2) (a.5) committed when such driver was under twenty-one years of age;

(h) Been determined to be mentally incompetent by a court of competent jurisdiction and for whom a court has entered, pursuant to part 3 or part 4 of article 14 of title 15, C.R.S., or section 27-10-109 (4) or 27-10-125, C.R.S., an order specifically finding that the mental incompetency is of such a degree that the person is incapable of safely operating a

motor vehicle;

(i) Been convicted of any offense provided for in section 42-4-1301 (1) or (2) (a) and has two previous convictions of any of such offenses. The license of any driver shall be revoked for an indefinite period and shall only be reissued upon proof to the department that said driver has completed a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3 and that said driver has demonstrated knowledge of the laws and driving ability through the regular motor vehicle testing process. In no event shall such license be reissued in less than two years.

(j) Been required to file and maintain proof of financial responsibility for the future as provided by section 42-4-1410 or article 7 of this title and who, at the time of a violation of any provision of this title, had not filed or was not maintaining such proof;

(k) Repealed.

(l) Been found to have knowingly and willfully left the scene of an accident involving a commercial motor vehicle driven by the person;

(m) Been convicted of violating section 12-47-901 (1) (b) or (1) (c), C.R.S., or section 18-13-122 (2), C.R.S., or any counterpart municipal charter or ordinance offense to such sections;

(n) Been convicted of defacing property in violation of section 18-4-509, C.R.S., or convicted of criminal mischief in violation of section 18-4-501, C.R.S., where the court finds that the underlying factual basis of the offense involves defacing property as described in section 18-4-509, C.R.S., or any counterpart municipal charter or ordinance offense to either of said sections;

(o) Been convicted of, or adjudicated as a juvenile delinquent for:

(I) An offense described in section 18-4-501, C.R.S., if the court determines that the criminal mischief involves damage to a motor vehicle; or

(II) An offense described in section 18-4-409 or 18-4-503 (1) (c), C.R.S.; or

(III) A comparable municipal charter or ordinance offense.

(2) The period of revocation based on paragraphs (b), (c), and (k) of subsection (1) of this section shall be one year; except that any violation involving a commercial motor vehicle transporting hazardous materials as defined under section 42-2-402 (7) shall result in a revocation period of three years.

(2.3) The period of revocation under subparagraph (l) of paragraph (g) of subsection (1) of this section shall be for not less than one year.

(2.4) After the expiration of the period of revocation pursuant to this section and any subsequently imposed periods of revocation, any person whose license is revoked under subparagraph (l) of paragraph (g) or paragraph (i) of subsection (1) of this section shall be required to have a restricted license pursuant to the provisions of section 42-2-132.5.

(2.5) The period of revocation under paragraph (g.5) of subsection (1) of this section for a person who is less than twenty-one years of age at the time of the offense and who is convicted of driving with an alcohol content of at least 0.02 but not more than 0.05 under section 42-4-1301 (2) (a.5) is as follows:

- (a) Except as provided in subsection (2.7) of this section, three months for a first offense;
- (b) Six months for a second offense;
- (c) One year for a third or subsequent offense.

(2.7) (a) A person whose license is revoked for a first offense under paragraph (g.5) of subsection (1) of this section may request that, in lieu of the three-month revocation, the person's license be revoked for a period of not less than thirty days, to be followed by a suspension period of such length that the total period of revocation and suspension equals three months. If the hearing officer approves such request, the hearing officer may grant such person a probationary license that may be used only for the reasons provided in section 42-2-127 (14) (a).

(b) The hearing to consider a request under paragraph (a) of this subsection (2.7) may be held at the same time as the hearing held under subsection (4) of this section; except that a probationary license may not become effective until at least thirty days have elapsed since the beginning of the revocation period.

(2.8) The period of revocation for a person whose license has been revoked pursuant to paragraph (o) of subsection (1) of this section shall be for not less than one year, and the person shall not be eligible for reinstatement of his or her license until the department receives proof that the person has satisfied any order for restitution entered in connection with the conviction.

(3) Upon revoking the license of any person as required by this section, the department shall immediately notify the licensee as provided in section 42-2-119 (2). Where a minor driver's license is revoked under paragraph (k) (II), (m), or (n) of subsection (1) of this section, such revocation shall not run concurrently with any previous or subsequent suspension, revocation, cancellation, or denial that is provided for by law.

(4) Upon receipt of the notice of revocation, the licensee or the licensee's attorney may request a hearing in writing, if the licensee has returned said license to the department in accordance with the provisions of section 42-2-133. The department, upon notice to the licensee, shall hold a hearing at the district office of the department closest to the residence of the licensee; except that, at the discretion of the department, all or part of the hearing may be conducted in real time, by telephone or other electronic means in accordance with section 42-1-218.5. The department shall hold the hearing not less than thirty days after receiving such license and request through a hearing commissioner appointed by the executive director of the department, which hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S. After such hearing, the licensee may appeal the decision of the department to the district court as provided in section 42-2-135. Should a driver who has had his or her license revoked under this section be subsequently acquitted of such charge by a court of record, the department shall immediately, in any event not later than ten days after the receipt of such notice of acquittal, reinstate said license to the driver affected.

(5) Except where more than one revocation occurs as a result of the same episode of driving, license revocations made pursuant to this section shall not run concurrently with any previous or subsequent revocation or denial in lieu of revocation which is provided for by law. Any revocation unused pursuant to this section shall not preclude other actions which the department is required to take pursuant to the provisions of this title, and unless otherwise provided by law,

this subsection (5) shall not prohibit revocations from being served concurrently with any suspension or denial in lieu of suspension of driving privileges.

(6) (a) Any person under seventeen years of age who has a minor driver's license revoked pursuant to paragraph (k) (II) or (m) of subsection (1) of this section shall be subject to a revocation period that shall continue for the period of time described hereafter:

(I) After one conviction, twenty-four hours of public service if ordered by the court, or three months;

(II) After a second conviction, six months;

(III) After any third or subsequent conviction, one year.

(b) Any person seventeen years of age or older who has a minor driver's license revoked pursuant to paragraph (k) (II) or (m) of subsection (1) of this section shall be subject to a revocation period that shall continue for the period of time described hereafter:

(I) After one conviction, twenty-four hours of public service if ordered by the court, or three months;

(II) After a second conviction, six months;

(III) After any third or subsequent conviction, one year.

(c) Repealed.

(7) Any person who has a driver's license, minor driver's license, or instruction permit revoked pursuant to paragraph (n) of subsection (1) of this section shall be subject to a revocation period which shall continue for the period of six months for each conviction.

42-2-126. Revocation of license based on administrative determination

(1) The purposes of this section are:

(a) To provide safety for all persons using the highways of this state by quickly revoking the driver's license of any person who has shown himself or herself to be a safety hazard by driving with an excessive amount of alcohol in his or her body and any person who has refused to submit to an analysis as required by section 42-4-1301.1;

(b) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for a full hearing;

(c) Following the revocation period, to prevent the relicensing of any person until the department is satisfied that such person's alcohol problem is under control and that such person no longer constitutes a safety hazard to other highway users.

(2) (a) The department shall revoke the license of any person upon its determination that the person:

(I) Drove a vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.08 or more grams of alcohol per one hundred milliliters of blood or 0.08 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time of testing, the preponderance of the evidence must also establish that the minimum 0.08 blood or breath alcohol content was reached as a result of alcohol consumed before the person stopped driving.

(1.5) Drove a vehicle in this state when such person was under twenty-one years of age and when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was in excess of 0.05 but less than 0.08 grams of alcohol per one hundred milliliters of blood or in excess of 0.05 but less than 0.08 grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time of testing, the preponderance of the evidence must also establish that the minimum required blood or breath alcohol content was reached as a result of alcohol consumed before the person stopped driving.

(1.7) Drove a vehicle in this state when such person was under twenty-one years of age and when the amount of alcohol, as shown by analysis of the person's breath, subject to section 42-4-1301.1, in such person's blood was at least 0.02 but not in excess of 0.05 grams of alcohol per one hundred milliliters of blood at the time of driving or within two hours after driving. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time of testing, the preponderance of the evidence must also establish that the minimum 0.02 breath alcohol content was reached as a result of alcohol consumed before the person stopped driving.

(II) Refused to take or to complete, or to cooperate in the completing of, any test or tests of the person's blood, breath, saliva, or urine as required by section 42-4-1301.1 (2), 18-3-106 (4), or 18-3-205 (4), C.R.S.

(III) Drove a commercial motor vehicle in this state when the amount of alcohol, as shown by analysis of such person's blood or breath, in such person's blood was 0.04 or more grams of alcohol per one hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of driving or any time thereafter; or

(IV) Drove a commercial motor vehicle in this state when such person was under twenty-one years of age and when the amount of alcohol in such person's blood, as shown by analysis of such person's breath, subject to section 42-4-1301.1, was at least 0.02 but less than 0.04 grams of alcohol per two hundred ten liters of breath at the time of driving or any time thereafter.

(b) The department shall make a determination of these facts on the basis of the documents and affidavit of a law enforcement officer as specified in subsection (3) of this section, and this determination shall be final unless a hearing is requested and held as provided in subsection (8) of this section.

(c) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this section.

(d) For purposes of this section, "license" includes driving privilege.

(2.5) If the department revokes a person's license pursuant to subparagraph (I), (II), or (III) of paragraph (a) of subsection (2) of this section, the department shall mail a notice to the owner of the motor vehicle used in the violation

informing the owner that:

(a) Such motor vehicle was driven in an alcohol-related driving violation; and

(b) Additional alcohol-related violations involving the motor vehicle by the same driver may result in a requirement that the owner file proof of financial responsibility under the provisions of section 42-7-406 (1.5).

(3) (a) Whenever a law enforcement officer has probable cause to believe that a person has violated section 42-4-1301 (2) or whenever a person refuses to take or to complete, or to cooperate with the completing of any test or tests of such person's blood, breath, saliva, or urine as required by section 42-4-1301.1, the law enforcement officer having such probable cause or requesting such test or tests shall forward to the department an affidavit containing information relevant to legal issues and facts which must be considered by the department to legally determine if a person's driving privilege should be revoked as provided in subsection (2) of this section. The executive director of the department shall specify to law enforcement agencies the form of the affidavit, the types of information needed in the affidavit, and any additional documents or copies of documents needed by the department to make its determination in addition to the affidavit. The affidavit shall be dated, signed, and sworn to by the law enforcement officer under penalty of perjury, but need not be notarized or sworn to before any other person.

(b) A law enforcement officer who has probable cause to believe that a person was driving a commercial motor vehicle with a blood alcohol concentration of 0.04 or more if the person was twenty-one years of age or older or 0.02 or more if the person was under twenty-one years of age shall forward to the department a verified report of all information relevant to the enforcement action, including information that adequately identifies the person, a statement of the officer's probable cause for belief that the person committed such violation, a report of the results of any tests that were conducted, and a copy of the citation and complaint, if any, filed with the court.

(4) (a) Upon receipt of the affidavit of the law enforcement officer and the relevant documents required by subsection (3) of this section, the department shall make the determination described in subsection (2) of this section. The determination shall be based upon the information contained in the affidavit and the relevant documents. If the department determines that the person is subject to license revocation, the department shall issue a notice of revocation if such notice has not already been served upon the person by the enforcement officer as required in subsection (5) of this section.

(b) The notice of revocation which is sent by the department shall be mailed in accordance with the provisions of section 42-2-119 (2) to the person at the last-known address shown on the department's records, if any, and to any address provided in the law enforcement officer's affidavit if that address differs from the address of record. The notice shall be deemed received three days after mailing.

(c) The notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person to request a hearing, the procedure for requesting a hearing, and the date by which that request for a hearing must be made.

(d) If the department determines that the person is not subject to license revocation, the department shall notify the person of its determination and shall rescind any order of revocation served upon the person by the enforcement officer.

(5) (a) (I) Whenever a law enforcement officer requests a person to take any test or tests as required by section 42-4-1301.1 and such person refuses to take or to complete or to cooperate in the completing of such test or tests or

whenever such test results are available to the law enforcement officer and such tests show an alcohol concentration of 0.08 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or 0.08 or more grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath if the person is twenty-one years of age or older or, subject to section 42-4-1301.1, at least 0.02 but not in excess of 0.05 grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath if the person is under twenty-one years of age and when the person who is tested or who refuses to take or to complete or to cooperate in the completing of any test or tests is still available to the law enforcement officer, the officer, acting on behalf of the department, shall serve the notice of revocation personally on such person.

(II) Whenever a law enforcement officer requests a person who is under twenty-one years of age to take any test or tests as required by section 42-4-1301.1 and such person refuses to take or to complete or to cooperate in the completing of such test or tests or whenever such test results are available to the law enforcement officer and such tests show an alcohol concentration in excess of 0.05 grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or in excess of 0.05 grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath and when the person who is tested or who refuses to take or to complete or to cooperate in the completing of any test or tests is still available to the law enforcement officer, the officer, acting on behalf of the department, shall serve the notice of revocation personally on such person.

(b) When the law enforcement officer serves the notice of revocation, the officer shall take possession of any driver's license issued by this state or any other state which is held by the person. When the officer takes possession of a valid driver's license issued by this state or any other state, the officer, acting on behalf of the department, shall issue a temporary permit which is valid for seven days after its date of issuance.

(c) A copy of the completed notice of revocation form, a copy of any completed temporary permit form, and any driver's, minor driver's, or temporary driver's license or any instruction permit taken into possession under this section shall be forwarded to the department by the officer along with the affidavit and documents required in subsections (2) and (3) of this section.

(d) The department shall provide forms for notice of revocation and for temporary permits to law enforcement agencies. The department shall establish a format for the affidavits required by this section and shall give notice of such format to all law enforcement agencies which submit affidavits to the department. Such law enforcement agencies shall follow the format determined by the department.

(e) A temporary permit may not be issued to any person who is already driving with a temporary permit issued pursuant to paragraph (b) of this subsection (5).

(6) (a) The license revocation shall become effective seven days after the subject person has received the notice of revocation as provided in subsection (5) of this section or is deemed to have received the notice of revocation by mail as provided in subsection (4) of this section. If a written request for a hearing is received by the department within that same seven-day period, the effective date of the revocation shall be stayed until a final order is issued following the hearing; except that any delay in the hearing which is caused or requested by the subject person or counsel representing that person shall not result in a stay of the revocation during the period of delay.

(b) (I) Except as otherwise provided in subparagraph (IX) of this paragraph (b), the period of license revocation under subparagraph (I) of paragraph (a) of subsection (2) of this section for a first violation shall be three months.

(II) The period of license revocation under subparagraph (I) of paragraph (a) of subsection (2) of this section for a second or subsequent revocation shall be one year.

(II.5) The period of license revocation under subparagraph (I.5) of paragraph (a) of subsection (2) of this section shall be:

(A) Except as provided in subparagraph (IX) of this paragraph (b), three months for a first violation;

(B) Six months for a second violation; and

(C) One year for a third or subsequent violation.

(III) The period of license revocation under subparagraph (II) of paragraph (a) of subsection (2) of this section or for a first violation under subparagraph (III) of paragraph (a) of subsection (2) of this section shall be one year.

(IV) The period of license revocation under subparagraph (II) or (III) of paragraph (a) of subsection (2) of this section involving a commercial motor vehicle that was transporting hazardous materials as defined in section 42-2-402 (7) shall be no less than three years.

(V) The second or subsequent revocation under subparagraph (II) or (III) of paragraph (a) of subsection (2) of this section involving a commercial motor vehicle shall result in a cancellation or denial as provided for under section 42-2-405 (3).

(VI) The period of license revocation under subparagraph (II) of paragraph (a) of subsection (2) of this section for a second refusal shall be two years.

(VII) The period of license revocation under subparagraph (II) of paragraph (a) of subsection (2) of this section for a third or subsequent refusal shall be three years.

(VIII) The period of license revocation for a violation under subparagraph (IV) of paragraph (a) of subsection (2) shall be:

(A) Except as provided in subparagraph (IX) of this paragraph (b), three months for a first violation;

(B) Six months for a second violation; and

(C) One year for a third or subsequent violation.

(IX) (A) A person whose license is revoked for a first offense under subparagraph (I.5) of paragraph (a) of subsection (2) of this section and whose blood alcohol content was not more than 0.05 grams of alcohol per one hundred milliliters of blood or not more than 0.05 grams of alcohol per two hundred ten liters of breath may request that, in lieu of the three-month revocation, the person's license be revoked for a period of not less than thirty days, to be followed by a suspension period of such length that the total period of revocation and suspension equals three months. If the hearing officer approves such request, the hearing officer may grant such person a probationary license that may be used only for the reasons provided in section 42-2-127 (14) (a).

(A.5) A person whose license is revoked for a first offense under subparagraph (I) of paragraph (a) of subsection (2) of

this section may request that, in lieu of the three-month revocation, the person's license be revoked for a period of not less than thirty days, to be followed by a suspension period of such length that the total period of revocation and suspension equals six months. If the hearing officer approves the request, the hearing officer may grant the person a probationary license that may be used only for the reasons provided in section 42-2-127 (14) (a).

(B) The hearing to consider a request under sub-subparagraph (A) or (A.5) of this subparagraph (IX) may be held at the same time as the hearing held under subsection (8) of this section; except that a probationary license may not become effective until at least thirty days have elapsed since the beginning of the revocation period.

(c) (I) Where a license is revoked under subparagraph (I), (I.5), (III), or (IV) of paragraph (a) of subsection (2) of this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of section 42-4-1301 (1) (a) or (2), both the revocation under this section and any suspension, revocation, cancellation, or denial which results from such conviction shall be imposed, but the periods shall run concurrently, and the total period of revocation, suspension, cancellation, or denial shall not exceed the longer of the two periods.

(II) Where a license is revoked under subparagraph (II) of paragraph (a) of subsection (2) of this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of section 42-4-1301 (1) (a) or (2), any suspension, revocation, cancellation, or denial which results from such conviction and is imposed shall run consecutively with the revocation under this section.

(III) Any revocation pursuant to this section shall run consecutively and not concurrently with any other revocation pursuant to this section.

(7) (a) The periods of revocation specified by subsection (6) of this section are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstances, and no probationary license shall be issued during the revocation period; except that:

(I) A person whose privilege to drive a commercial motor vehicle has been revoked because the person drove a commercial motor vehicle when the person's blood alcohol content was 0.04 or greater, but less than 0.08, grams of alcohol per one hundred milliliters of blood or per two hundred ten liters of breath and who was twenty-one years of age or older at the time of the offense may apply for a driver's license of another class or type as long as there is no other statutory reason to deny the person a license. Such person may not operate any commercial motor vehicle during the period of revocation of such person's privilege to operate commercial motor vehicles. The department may not issue such person a probationary license that would authorize such person to operate any commercial motor vehicle.

(II) Repealed.

(b) Upon the expiration of the period of revocation under this section, if the person's license is still suspended or revoked on other grounds, the person may seek a probationary license as authorized by section 42-2-127 (14) subject to the requirements of paragraph (c) of this subsection (7).

(c) (I) Following a license revocation, the department shall not issue a new license or otherwise restore the driving privilege unless it is satisfied, after an investigation of the character, habits, and driving ability of the person, that it will be safe to grant the privilege of driving a motor vehicle on the highways. The department may not require a person to undergo skills or knowledge testing prior to issuance of a new license or restoration of such person's driving privilege if such person's license was revoked for a first violation of driving with excessive alcohol content pursuant to subparagraph

(l) of paragraph (b) of subsection (6) of this section.

(II) If the person was determined to be in violation of subparagraph (I) of paragraph (a) of subsection (2) of this section and the person had a blood alcohol level, as shown by analysis of such person's blood or breath, that was 0.20 or more grams of alcohol per one hundred milliliters of blood or 0.20 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving; or if the person's driving record otherwise indicates a designation as a persistent drunk driver as defined in section 42-1-102 (68.5), the department shall require such person to complete a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3 before driving privileges may be restored.

(III) If the total period of license restraint under this paragraph (c) is not sufficient to allow for the completion of level II alcohol and drug education and treatment, or the documentation of completion of such education and treatment is incomplete at the time of reinstatement, proof of current enrollment in a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3, on a form approved by the department shall be filed with the department.

(8) (a) Any person who has received a notice of revocation may make a written request for a review of the department's determination at a hearing. The request may be made on a form available at each office of the department. If the person's driver's license has not been previously surrendered, it must be surrendered at the time the request for a hearing is made.

(b) The request for a hearing must be made in writing within seven days after the day the person received the notice of revocation as provided in subsection (5) of this section or is deemed to have received the notice by mail as provided in subsection (4) of this section. If written request for a hearing is not received within the seven-day period, the right to a hearing is waived, and the determination of the department which is based upon the documents and affidavit required by subsections (2) and (3) of this section becomes final.

(c) If a written request for a hearing is made after expiration of the seven-day period and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a hearing, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request due to lack of actual notice of the revocation or due to factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the hearing request. In such a case, a stay of the revocation pending issuance of the final order following the hearing shall not be granted.

(d) At the time the request for a hearing is made, if it appears from the record that the person is the holder of a valid driver's or minor driver's license or any instruction permit issued by this state or temporary permit issued pursuant to subsection (5) of this section and that the license has been surrendered as required pursuant to subsection (5) of this section, the department shall issue a temporary permit which will be valid until the scheduled date for the hearing. If necessary, the department may later issue an additional temporary permit or permits in order to stay the effective date of the revocation until the final order is issued following the hearing, as required by subsection (6) of this section.

(e) (I) The hearing shall be scheduled to be held as quickly as practicable but not more than sixty days after the day that the request for a hearing is received by the department; except that, if a hearing is rescheduled because of the unavailability of a law enforcement officer or the hearing officer in accordance with subparagraph (III) or (IV) of this paragraph (e), the hearing may be rescheduled more than sixty days after the day that the request for the hearing is received by the department, and the department shall continue any temporary driving privileges held by the respondent

until the date that such hearing is rescheduled. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing in the manner provided in section 42-2-119 (2) at least ten days prior to the scheduled or rescheduled hearing, unless the parties agree to waive this requirement. Notwithstanding the provisions of section 42-2-119, the last-known address of the respondent for purposes of notice for any hearing pursuant to this section shall be the address stated on the hearing request form.

(II) The law enforcement officer who submits the documents and affidavit required by subsection (3) of this section need not be present at the hearing unless the presiding hearing officer requires that the law enforcement officer be present and the hearing officer issues a written notice for the law enforcement officer's appearance or unless the respondent or attorney for the respondent determines that the law enforcement officer should be present and serves a timely subpoena upon such officer in accordance with subparagraph (II.5) of this paragraph (e). If the respondent notifies the department in writing at the time that the hearing is requested that the respondent desires the law enforcement officer's presence at the hearing, the department shall issue a written notice for the officer to appear at the hearing. An officer required to appear at a hearing may, at the discretion of the hearing officer, appear in real time by telephone or other electronic means in accordance with section 42-1-218.5.

(II.5) Any subpoena served upon a law enforcement officer for attendance at a hearing conducted pursuant to this section shall be served at least five calendar days before the day of the hearing.

(III) If a law enforcement officer, after receiving a notice or subpoena to appear from either the department or the respondent, is unable to appear at any original or rescheduled hearing date set by the department due to a reasonable conflict, including but not limited to training, vacation, or personal leave time, the officer or the officer's supervisor shall contact the department not less than forty-eight hours prior to the hearing and reschedule the hearing to a time when the officer will be available. If the law enforcement officer cannot appear at any original or rescheduled hearing because of medical reasons, a law enforcement emergency, another court or administrative hearing, or any other legitimate just cause as determined by the department and the officer or the officer's supervisor gives notice of such officer's inability to appear to the department prior to the dismissal of the revocation proceeding, the department shall reschedule the hearing following consultation with the officer or the officer's supervisor at the earliest possible time when the officer and the hearing officer will be available.

(IV) If a hearing officer cannot appear at any original or rescheduled hearing because of medical reasons, a law enforcement emergency, another court or administrative hearing, or any other legitimate just cause, such hearing officer or the department may reschedule the hearing at the earliest possible time when the law enforcement officer and the hearing officer will be available.

(V) At the time that a respondent requests a hearing, written notice shall be given to the respondent advising such respondent of the right to subpoena the law enforcement officer for the hearing, that such subpoena must be served upon the officer in accordance with subparagraph (II.5) of this paragraph (e), and of the respondent's right, at the time that the respondent requests the hearing, to notify the department in writing that the respondent desires the officer's presence at the hearing, and that, upon such notification, the department shall issue a written notice for the officer to appear at the hearing. The written notice shall also state that, if the law enforcement officer does not appear at the hearing, documents and an affidavit prepared and submitted by the law enforcement officer will be used at the hearing. The written notice shall further state that the affidavit and documents submitted by the law enforcement officer may be reviewed by the respondent prior to the hearing.

(f) If a hearing is held pursuant to this subsection (8), the department shall review the matter and make a final

determination on the basis of the documents and affidavit submitted to the department pursuant to subsections (2) and (3) of this section. Except as provided in paragraph (e) of this subsection (8), the law enforcement officer who submitted the affidavit required by subsection (3) of this section need not be present at the hearing. The department shall consider all other relevant evidence at the hearing, including the testimony of law enforcement officers and the reports of such officers which are submitted to the department. The reports of law enforcement officers shall not be required to be made under oath, but such reports shall identify the officers making the reports. The department may consider evidence contained in affidavits from persons other than the respondent, so long as such affidavits include the affiant's home or work address and phone number and are dated, signed, and sworn to by the affiant under penalty of perjury. The affidavit need not be notarized or sworn to before any other person.

(9) (a) The hearing shall be held in the district office nearest to where the violation occurred, unless the parties agree to a different location; except that, at the discretion of the department, all or part of the hearing may be conducted in real time, by telephone or other electronic means in accordance with section 42-1-218.5. The person requesting the hearing may be referred to as the respondent.

(b) The presiding hearing officer shall be the executive director of the department or an authorized representative designated by the executive director. The presiding hearing officer shall have authority to administer oaths and affirmations; to consider the affidavit of the law enforcement officer filing such affidavit as specified in subsection (3) of this section; to consider other law enforcement officers' reports which are submitted to the department, which reports need not be under oath but shall identify the officers making the reports; to examine and consider documents and copies of documents containing relevant evidence; to consider other affidavits which are dated, signed, and sworn to by the affiant under penalty of perjury, which affidavits need not be notarized or sworn to before any other person but shall contain the affiant's home or work address and phone number; to take judicial notice as defined by rule 201 of article II of the Colorado rules of evidence, subject to the provisions of section 24-4-105 (8), C.R.S., which shall include judicial notice of general, technical, or scientific facts within the hearing officer's knowledge, judicial notice of appropriate and reliable scientific and medical information contained in studies, articles, books, and treatises, and judicial notice of charts prepared by the department of public health and environment pertaining to the maximum blood or breath alcohol levels that people can obtain through the consumption of alcohol when such charts are based upon the maximum absorption levels possible of determined amounts of alcohol consumed in relationship to the weight and gender of the person consuming such alcohol; to compel witnesses to testify or produce books, records, or other evidence; to examine witnesses and take testimony; to receive and consider any relevant evidence necessary to properly perform the hearing officer's duties as required by this section; to issue subpoenas duces tecum to produce books, documents, records, or other evidence; to issue subpoenas for the attendance of witnesses; to take depositions, or cause depositions or interrogatories to be taken; to regulate the course and conduct of the hearing; and to make a final ruling on the issues.

(c) (I) Where a license is revoked under subparagraph (I), (I.5), or (I.7) of paragraph (a) of subsection (2) of this section, the sole issue at the hearing shall be whether, by a preponderance of the evidence, the person drove a vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.08 or more grams of alcohol per one hundred milliliters of blood or 0.08 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving if the person was twenty-one years of age or older at the time of driving the vehicle or, subject to section 42-4-1301.1, at least 0.02 but not in excess of 0.05 grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving if the person was under twenty-one years of age at the time of driving the vehicle, or in excess of 0.05 grams of alcohol per one hundred milliliters of blood or in excess of 0.05 grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving if the person was under twenty-one years of age at the time of driving the vehicle. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped

driving and the time that testing occurred, the preponderance of the evidence must also establish that the minimum 0.08 blood or breath alcohol content required in subparagraph (I) of paragraph (a) of subsection (2) of this section, the minimum 0.05 blood or breath alcohol content required in subparagraph (I.5) of paragraph (a) of subsection (2) of this section, or the minimum 0.02 breath alcohol content required in subparagraph (I.7) of paragraph (a) of subsection (2) of this section was reached as a result of alcohol consumed before the person stopped driving; or, where a license is revoked under subparagraph (II) of paragraph (a) of subsection (2) of this section, whether the person refused to take or to complete or to cooperate in the completing of any test or tests of the person's blood, breath, saliva, or urine as required by section 42-4-1301.1. If the presiding hearing officer finds the affirmative of the issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(II) When the determination of the issue pursuant to this paragraph (c) is based upon an analysis of the respondent's blood or breath and evidence is offered by the respondent to show a disparity between the results of the analysis done on behalf of the law enforcement agency and the results of an analysis done on behalf of the respondent, and when a preponderance of the evidence establishes that the blood analysis conducted on behalf of the law enforcement agency was properly conducted by a qualified person associated with a laboratory certified by the department of public health and environment using properly working testing devices or when a preponderance of the evidence establishes that the law enforcement breath test was administered using a properly working breath testing device certified by the department of public health and environment, which device was properly operated by a qualified operator, there shall be a presumption favoring the accuracy of the analysis done on behalf of the law enforcement agency if such analysis showed the amount of alcohol in the respondent's blood or breath to be 0.096 or more grams of alcohol per hundred milliliters of blood or 0.096 or more grams of alcohol per two hundred ten liters of breath. If the respondent offers evidence of blood or breath analysis, the respondent shall be required to state under oath the number of analyses done in addition to the one offered as evidence and the names of the laboratories that performed the analyses and the results of all analyses.

(III) Where a license is revoked under subparagraph (III) or subparagraph (IV) of paragraph (a) of subsection (2) of this section, the sole issue at the hearing shall be whether, by a preponderance of the evidence, the person drove a commercial motor vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.04 or more grams of alcohol per one hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of driving or anytime thereafter for a person twenty-one years of age or older or, subject to section 42-4-1301.1, 0.02 but less than 0.04 grams of alcohol per two hundred ten liters of breath at the time of driving or anytime thereafter for a person under twenty-one years of age, or 0.04 or more grams of alcohol per one hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of driving or anytime thereafter for a person under twenty-one years of age, if the preponderance of the evidence establishes that such person did not consume any alcohol between the time of driving and the time of testing. If the presiding hearing officer finds the affirmative of the issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(IV) Under no circumstances shall the presiding hearing officer consider any issue not specified in this paragraph (c).

(d) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the person who requested the hearing.

(e) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the determination of the department which is based upon the documents and affidavit required in subsections (2) and (3) of this section shall become final.

(10) (a) Within thirty days of the issuance of the final determination of the department under this section, a person aggrieved by the determination shall have the right to file a petition for judicial review in the district court in the county of the person's residence.

(b) The review shall be on the record without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

(c) The filing of a petition for judicial review shall not result in an automatic stay of the revocation order. The court may grant a stay of the order only upon motion and hearing and upon a finding that there is a reasonable probability that the petitioner will prevail upon the merits and that the petitioner will suffer irreparable harm if the order is not stayed.

(11) The "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall apply to this section to the extent it is consistent with subsections (8), (9), and (10) of this section relating to administrative hearings and judicial review.

42-2-127. Authority to suspend license - to deny license - type of conviction - points

(1) (a) Except as provided in paragraph (b) of subsection (8) of this section, the department has the authority to suspend the license of any driver who, in accordance with the schedule of points set forth in this section, has been convicted of traffic violations resulting in the accumulation of twelve points or more within any twelve consecutive months or eighteen points or more within any twenty-four consecutive months, or, in the case of a minor driver eighteen years of age or older, who has accumulated nine points or more within any twelve consecutive months, or twelve points or more within any twenty-four consecutive months, or fourteen points or more for violations occurring after reaching the age of eighteen years, or, in the case of a minor driver under the age of eighteen years, who has accumulated more than five points within any twelve consecutive months or more than six points for violations occurring prior to reaching the age of eighteen years; except that the accumulation of points causing the subjection to suspension of the license of a chauffeur who, in the course of employment, has as a principal duty the operation of a motor vehicle shall be sixteen points in one year, twenty-four points in two years, or twenty-eight points in four years, if all the points are accumulated while said chauffeur is in the course of employment. Any provision of this section to the contrary notwithstanding, the license of a chauffeur who is convicted of a violation of section 42-4-1301 (1) or (2) or leaving the scene of an accident shall be suspended in the same manner as if the offense occurred outside the course of employment. Whenever a minor driver under the age of eighteen years receives a summons for a traffic violation, the minor's parent or legal guardian or, if the minor is without parents or guardian, the person who signed the minor driver's application for a license shall immediately be notified by the court from which such summons was issued.

(b) If any applicant for a license to operate a motor vehicle has illegally operated a motor vehicle in this state prior to the issuance of a valid driver's or minor driver's license or instruction permit or in violation of the terms of any instruction permit within thirty-six months prior to said application, the department has the authority to deny the issuance of said license for not more than twelve months.

(c) For the purpose of this section, any points accumulated by a minor under an instruction permit shall apply to the minor driver's license subsequently issued to or applied for by such minor.

(d) Except as otherwise provided in subsection (9) of this section, no suspension or denial shall be made until a hearing has been held in accordance with the provisions of this section. This section shall not be construed to prevent the

issuance of a restricted license pursuant to section 42-2-116.

(2) (a) The time periods provided in subsection (1) of this section for the accumulation of points shall be based on the date of violation, but points shall not be assessed until after conviction for any such traffic violation.

(b) The accumulation of points within the time periods provided in subsection (1) of this section shall not be affected by the issuance or renewal of any driver's or minor driver's license issued under the provisions of this article or the anniversary date thereof.

(3) Nothing in subsections (1) and (2) of this section shall affect or prevent any proceedings to suspend any license under the provisions of law existing prior to July 1, 1974.

(4) Statutory provisions for cancellation and mandatory revocation of drivers' licenses shall take precedence over this section.

(5) Point system schedule:

Type of conviction Points

(a) Leaving scene of accident 12

(b) (I) Driving while under the influence or with an excessive alcoholic content pursuant to section 42-4-1301 (1) (a) or (2) 12

(II) Driving while under the influence of any controlled substance pursuant to section 42-4-1301 (1) (c) 12

(III) Driving while ability is impaired pursuant to section 42-4-1301 (1) (b) 8

(IV) For a person under twenty-one years of age, driving with an alcohol content of at least 0.02 but not more than 0.05 pursuant to section 42-4-1301 (2) (a.5) 4

(c) Speed contests 12

(d) Reckless driving 8

(e) Careless driving 4

(f) Speeding:

(I) One to four miles per hour over the reasonable and prudent speed or one to four miles per hour over the maximum lawful speed limit of seventy-five miles per hour 0

(II) Five to nine miles per hour over the reasonable and prudent speed or five to nine miles per hour over the maximum lawful speed limit of seventy-five miles per hour 1

(III) Ten to nineteen miles per hour over the reasonable and prudent speed or ten to nineteen miles per hour over the

maximum lawful speed limit of seventy-five miles per hour 4

(IV) Twenty to thirty-nine miles per hour over the reasonable and prudent speed or twenty to thirty-nine miles per hour over the maximum lawful speed limit of seventy-five miles per hour 6

(IV.5) Forty or more miles per hour over the reasonable and prudent speed or forty or more miles per hour over the maximum lawful speed limit of seventy-five miles per hour 12

(V) Failure to reduce speed below an otherwise lawful speed when a special hazard exists 3

(g) Failure to stop for school signals 6

(h) Driving on wrong side of road or driving on wrong side of divided or controlled-access highway in violation of section 42-4-10104

(i) Improper passing 4

(j) Failure to stop for school bus 6

(k) Following too closely 4

(l) Failure to observe traffic sign or signal, except as provided in paragraph (ff) of this subsection (5)4

(m) Failure to yield to emergency vehicle 4

(n) Failure to yield right-of-way, except as provided in paragraphs (y) to (bb) of this subsection (5)3

(o) Improper turn3

(p) Driving in wrong lane or direction on one-way street 3

(q) Driving through safety zone3

(r) Conviction of violations not listed in this subsection (5) while driving a moving vehicle, which are violations of a state law or municipal ordinance other than violations classified as class B traffic infractions under section 42-4-1701 or having an equivalent classification under any municipal ordinance3

(s) Failure to signal or improper signal2

(t) Improper backing2

(u) Failure to dim or turn on lights2

(v) (I) Except as provided in subparagraph (II) of this paragraph (v), operating an unsafe vehicle2

(II) Operating a vehicle with defective head lamps1

- (w) Eluding or attempting to elude a police officer¹²
 - (x) Alteration of suspension system³
 - (y) Failure to yield right-of-way to pedestrian⁴
 - (z) Failure to yield right-of-way to pedestrian at walk signal⁴
 - (aa) Failure to yield right-of-way to pedestrian upon emerging from alley, driveway, or building in a commercial or residential area⁴
 - (bb) Failure to yield right-of-way to person with a disability pursuant to section 42-4-8086
 - (cc) Failure to exercise due care for pedestrian pursuant to section 42-4-8074
 - (dd) A second or subsequent violation of section 42-2-101 (1) and (4)⁶
 - (ee) Failure to maintain or show proof of insurance pursuant to section 42-4-14094
 - (ff) Failure to observe high occupancy vehicle lane restrictions pursuant to section 42-4-10120
 - (gg) Driving between the hours of 12 midnight and 5 a.m. in violation of section 42-2-105.5 (2)²
 - (hh) Driving a motor vehicle while not wearing a seat belt in violation of section 42-2-105.5 (3)²
 - (ii) Driving with more passengers than seat belts in violation of section 42-2-105.5 (4)²
- (5.5) If a person receives a penalty assessment notice for a violation under section 42-4-1701 (5) and such person pays the fine and surcharge for the violation on or before the date the payment is due, the points assessed for the violation are reduced as follows:
- (a) For a violation having an assessment of three or more points under subsection (5) of this section, the points are reduced by two points;
 - (b) For a violation having an assessment of two points under subsection (5) of this section, the points are reduced by one point.
- (5.6) (a) Any municipality may elect to have the provisions of subsection (5.5) of this section apply to penalty assessment notices issued by the municipality pursuant to counterpart municipal ordinances. Whenever a municipality reduces a traffic offense, the reduced offense and the points assessed for such reduced offense shall conform to the point assessment schedule under subsection (5) of this section.
- (b) Any county may elect to have the provisions of subsection (5.5) of this section apply to penalty assessment notices issued by the county pursuant to counterpart county ordinances. Whenever a county reduces a traffic offense, the reduced offense and the points assessed for such reduced offense shall conform to the point assessment schedule under

subsection (5) of this section.

(5.7) Notwithstanding any other provision of the statutes to the contrary, if a penalty assessment for a traffic infraction is not personally served on the defendant or the defendant has not accepted the jurisdiction of the court for such penalty assessment, then the traffic infraction is a class B traffic infraction and the department has no authority to assess any points under this section upon entry of judgment for such traffic infraction.

(5.8) Notwithstanding any other provision of this section, the department may not assess any points for a violation if such assessment of points is prohibited under section 42-4-110.5 (3).

(6) (a) "Convicted" and "conviction", as used in this section, include conviction in any court of record or municipal court, or by the Southern Ute Indian tribal court, or by any military authority for offenses substantially the same as those set forth in subsection (5) of this section which occur on a military installation in this state and also include the acceptance and payment of a penalty assessment under the provisions of section 42-4-1701 or under the similar provisions of any town or city ordinance and the entry of a judgment or default judgment for a traffic infraction under the provisions of section 42-4-1701 or 42-4-1710 or under the similar provisions of any municipal ordinance.

(b) For the purposes of this article, a plea of no contest accepted by the court or the forfeiture of any bail or collateral deposited to secure a defendant's appearance in court or the failure to appear in court by a defendant charged with a violation of section 42-4-1301 (1) (a), (1) (c), or (2) who has been issued a summons and notice to appear pursuant to section 42-4-1707 as evidenced by records forwarded to the department in accordance with the provisions of section 42-2-124 shall be considered as a conviction.

(c) The provisions of paragraph (r) of subsection (5) of this section shall not be applicable to violations of the requirements of sections 42-2-115, 42-3-133, and 42-4-314.

(7) Upon the accumulation by a licensee of half as many points as are required for suspension, the department may send such licensee a warning letter in accordance with section 42-2-119 (2) or order a preliminary hearing, but the failure of the department to send such warning letter or hold such preliminary hearing shall not be grounds for invalidating the licensee's subsequent suspension as a result of accumulating additional points as long as the suspension is carried out under the provisions of this section. Should a preliminary hearing be ordered by the department and should the licensee fail to attend or show good cause for failure to attend, the department may suspend such license in the same way as if the licensee had accumulated sufficient points for suspension and had failed to attend such suspension hearing.

(8) (a) Except as otherwise provided in subsection (9) of this section, whenever the department's records show that a licensee has accumulated a sufficient number of points to be subject to license suspension, the department shall notify the licensee that a hearing will be held not less than twenty days after the date of the notice to determine whether the licensee's driver's license should be suspended. The notification shall be given to the licensee in writing by regular mail, addressed to the address of the licensee as shown by the records of the department.

(b) (I) If the department's records indicate that a driver has accumulated a sufficient number of points to cause a suspension under subsection (1) of this section and the driver is subject to a current or previous license restraint with a determined reinstatement date for the same offense or conviction that caused the driver to accumulate sufficient points to warrant suspension, the department may not order a point suspension of the license of the driver unless the license or driving privilege of the driver was revoked pursuant to section 42-2-126 (2) (a) (II).

(11) If the department does not order a point suspension against the license of a driver because of the existence of a current or previous license restraint with a determined reinstatement date under the provisions of subparagraph (1) of this paragraph (b), the department shall utilize the points that were assessed against the driver in determining whether to impose any future license suspension if the driver accumulates any more points against the driver's license.

(9) (a) Whenever the department receives notice that a person has pled guilty to, or been found guilty by a court or a jury of, a violation of section 42-4-1301 (1) (a), (1) (c), or (2) (a) and receives the license surrendered by the person to the court pursuant to section 42-2-129, the department shall immediately suspend the license of the person for a period of not less than one year. If the department is also required to enter a license revocation for a period of one year or longer under any provision of this title based on the same conviction, the suspension shall not be entered.

(b) Upon suspending the license of any person as required by this subsection (9), the department shall immediately notify the licensee as provided in section 42-2-119 (2).

(c) Upon receipt of the notice of suspension, the licensee or the licensee's attorney may request a hearing in writing. The department, upon notice to the licensee as provided in section 42-2-119 (2), shall hold a hearing not less than thirty days after receiving such request through a hearing commissioner appointed by the executive director of the department, which hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S. The hearing shall be held at the district office of the department closest to the residence of the licensee; except that all or part of the hearing may, at the discretion of the department, be conducted in real time, by telephone or other electronic means in accordance with section 42-1-218.5. After such hearing, the licensee may appeal the decision of the department to the district court as provided in section 42-2-135. Should a driver who has had a license suspended under this subsection (9) be subsequently acquitted of such charge by a court of record, the department shall immediately, in any event not later than ten days after the receipt of such notice of acquittal, reinstate said license to the driver affected.

(10) Suspension hearings when ordered by the department shall be held at the district office of the department closest to the residence of the licensee; except that all or part of the hearing may, at the discretion of the department, be conducted in real time, by telephone or other electronic means in accordance with section 42-1-218.5. A hearing delay shall be granted by the department only if the licensee presents the department with good cause for such delay. Good cause shall include absence from the state or county of residence, personal illness, or any other circumstance which, in the department's discretion, constitutes sufficient reason for delay. In the event that a suspension hearing is delayed, the department shall set a new date for such hearing no later than sixty days after the date of the original hearing.

(11) Upon such hearing, the department or its authorized agent may administer oaths, issue subpoenas for the attendance of witnesses and the production of books and papers, apply to the district court for the enforcement thereof by contempt proceedings, and require a reexamination of the licensee.

(12) If at the hearing held pursuant to subsection (8) of this section it appears that the record of the driver sustains suspension as provided in this section, the department shall immediately suspend such driver's license, and such license shall then be surrendered to the department. If at such hearing it appears that the record of the driver does not sustain suspension, the department shall not suspend such license and shall adjust the accumulated-point total accordingly. In the event that the driver's license is suspended, the department may issue a probationary license for a period not to exceed the period of suspension, which license may contain such restrictions as the department deems reasonable and necessary and which may thereafter be subject to cancellation as a result of any violation of the restrictions imposed therein. The department may also order any driver whose license is suspended to take a complete driving reexamination. After such hearing, the licensee may appeal the decision to the district court as provided in section 42-2-135.

(13) If the driver fails to appear at such hearing after proper notification as provided in subsections (7) and (8) of this section and a delay or continuance has not been requested and granted as provided in subsection (10) of this section, the department shall immediately suspend the license of such driver, but such suspension or revocation shall not be effective until twenty days after notification of such action has been given to the licensee as provided in section 42-2-119 (2). The notification of suspension or revocation shall recite therein that the licensee may apply for a hearing at any time within twenty days after the date of notification of the order of suspension or revocation, and the licensee shall be advised that, if a hearing is applied for, the effective date of the order will be extended until after the hearing is held. Such hearing shall be held within sixty days after application is made, and, at said hearing, it shall be determined whether the order of suspension or revocation shall be entered in the same manner as if the licensee had originally appeared after first notice.

(14) (a) If there is no other statutory reason for denial of a probationary license, any individual who has had a license suspended by the department because of, at least in part, a conviction of an offense specified in paragraph (b) of subsection (5) of this section may be entitled to a probationary license pursuant to subsection (12) of this section for the purpose of driving for reasons of employment, education, health, or alcohol and drug education or treatment; but such individual, if ordered by the court which convicted the individual, shall be enrolled in a program of driving education or alcohol and drug education and treatment certified by the division of alcohol and drug abuse in the department of human services. Such a probationary license shall contain any other restrictions as the department deems reasonable and necessary, shall be subject to cancellation for violation of any such restrictions, including absences from alcohol and drug education or treatment sessions or failure to complete alcohol and drug education or treatment programs, and shall be issued for the entire period of suspension.

(b) The department may refuse to issue a probationary license if the department finds that the driving record of the individual is such that the individual has sufficient points, in addition to those resulting from the conviction referred to in this subsection (14), to require the suspension or revocation of a license to drive on the highways of this state, or if the department finds from the record after a hearing conducted in accordance with subsection (12) of this section that aggravating circumstances exist to indicate the individual is unsafe for driving for any purpose. In refusing to issue a probationary license, the department shall make specific findings of fact to support such refusal.

(c) No district attorney shall enter into, nor shall any judge approve, a plea bargaining agreement entered into solely for the purpose of permitting the defendant to qualify for a probationary license under this subsection (14).

(15) (a) (I) Whenever the department receives notice that a person has twice been convicted of, adjudicated for, or entered a plea of guilty or nolo contendere to a violation of section 18-4-418, C.R.S., the department shall suspend the license of the person for a period of six months.

(II) Whenever the department receives notice that a person has three or more times been convicted of, adjudicated for, or entered a plea of guilty or nolo contendere to a violation of section 18-4-418, C.R.S., the department shall suspend the license of the person for a period of one year.

(b) Upon suspending the license of any person as required by this subsection (15), the department shall immediately notify the licensee as provided in section 42-2-119 (2).

(c) Upon a licensee's receipt of the notice of suspension, the licensee or the licensee's attorney may submit a written request to the department for a hearing. The department shall hold a hearing not less than thirty days after receiving such request. The hearing shall be conducted by a hearing commissioner appointed by the executive director of the

department, and shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.

(d) If a driver who has had a license suspended under this subsection (15) is subsequently acquitted of such charge by a court of record, the department shall immediately, or in any event no later than ten days after the receipt of notice of such acquittal, reinstate said license.

42-2-129. Mandatory surrender of license or permit for driving under the influence or with excessive alcoholic content

Upon a plea of guilty or nolo contendere, or a verdict of guilty by the court or a jury, to a violation of section 42-4-1301 (1) (a), (1) (c), or (2) (a), or, for a person under twenty-one years of age, to a violation of section 42-4-1301 (1) (a), (1) (b), (1) (c), (2) (a), or (2) (a.5), the court shall require the offender to immediately surrender the offender's driver's, minor driver's, or temporary driver's license or instruction permit to the court. The court shall forward to the department a notice of plea or verdict, on the form prescribed by the department, together with the offender's license or permit, not later than ten days after the surrender of the license or permit. Any person who does not immediately surrender such license or permit to the court, except for good cause shown, commits a class 2 misdemeanor traffic offense.

42-2-202. Habitual offenders - frequency and type of violations

(1) An habitual offender is any person, resident or nonresident, who has accumulated convictions for separate and distinct offenses described in subsection (2) of this section committed during a seven-year period or committed during a five-year period for separate and distinct offenses described in subsection (3) of this section; except that, where more than one included offense is committed within a one-day period, such multiple offenses shall be treated for the purposes of this part 2 as one offense. The record as maintained in the office of the department shall be considered prima facie evidence of the said convictions.

(2) (a) An habitual offender is a person having three or more convictions of any of the following separate and distinct offenses arising out of separate acts committed within a period of seven years:

(I) Driving a motor vehicle in violation of any provision of section 42-4-1301 (1) or (2) (a);

(II) Driving a motor vehicle in a reckless manner, in violation of section 42-4-1401;

(III) Driving a motor vehicle upon a highway while such person's license or privilege to drive a motor vehicle has been denied, suspended, or revoked, in violation of section 42-2-138;

(IV) Knowingly making any false affidavit or swearing or affirming falsely to any matter or thing required by the motor vehicle laws or as to information required in the administration of such laws;

(V) Vehicular assault or vehicular homicide, or manslaughter or criminally negligent homicide which results from the operation of a motor vehicle, or aggravated motor vehicle theft, as such offenses are described in title 18, C.R.S.;

(VI) Conviction of the driver of a motor vehicle involved in any accident involving death or personal injuries for failure to perform the duties required of such person under section 42-4-1601.

(b) The offenses included in subparagraphs (I), (II), (III), and (V) of paragraph (a) of this subsection (2) shall be deemed

to include convictions under any federal law, any law of another state, or any ordinance of a municipality that substantially conforms to the statutory provisions of this state regulating the operation of motor vehicles. For purposes of this paragraph (b), the term "municipality" means any home rule or statutory city or town, a territorial charter city, or a city and county.

(3) A person is also an habitual offender if such person has ten or more convictions of separate and distinct offenses arising out of separate acts committed within a period of five years involving moving violations which provide for an assessment of four or more points each or eighteen or more convictions of separate and distinct offenses arising out of separate acts committed within a period of five years involving moving violations which provide for an assessment of three or less points each in the operation of a motor vehicle, which convictions are required to be reported to the department and result in the assessment of points under section 42-2-127, including any violations specified in subsection (2) of this section.

(4) For the purpose of this section, the term "conviction" has the meaning specified in section 42-2-127 (6) and includes entry of judgment for commission of a traffic infraction as set forth in section 42-4-1701.

42-2-126.3. Tampering with an ignition interlock device

(1) No person may intercept, bypass, or interfere with or aid any other person in intercepting, bypassing, or interfering with an ignition interlock device for the purpose of preventing or hindering the lawful operation or purpose of the ignition interlock device required under section 42-2-132.5.

(2) No person may drive a motor vehicle in which an ignition interlock device is installed pursuant to section 42-2-132.5 if the person has knowledge that any person has intercepted, bypassed, or interfered with the ignition interlock device.

(3) Any person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

42-2-129. Mandatory surrender of license or permit for driving under the influence or with excessive alcoholic content

Upon a plea of guilty or nolo contendere, or a verdict of guilty by the court or a jury, to a violation of section 42-4-1301 (1) (a), (1) (c), or (2) (a), or, for a person under twenty-one years of age, to a violation of section 42-4-1301 (1) (a), (1) (b), (1) (c), (2) (a), or (2) (a.5), the court shall require the offender to immediately surrender the offender's driver's, minor driver's, or temporary driver's license or instruction permit to the court. The court shall forward to the department a notice of plea or verdict, on the form prescribed by the department, together with the offender's license or permit, not later than ten days after the surrender of the license or permit. Any person who does not immediately surrender such license or permit to the court, except for good cause shown, commits a class 2 misdemeanor traffic offense.

42-2-132.5. Mandatory and voluntary restricted licenses following alcohol conviction

(1) The following persons shall be required to hold a restricted license pursuant to this section for at least one year prior to being eligible to obtain any other driver's license issued under this article:

(a) Any person who has been convicted on two or more occasions of DUI or DUI per se, as defined in section 42-4-1300.3, which offenses were committed within a period of five years and one of the offenses occurred on or after July 1,

1999, and on or before June 30, 2000;

(b) Any person whose privilege to drive was revoked pursuant to section 42-2-125 (1) (g) (I) or (1) (i) and one of the offenses giving rise to the revocation occurred on or after July 1, 2000;

(c) Any person whose privilege to drive was revoked under section 42-2-203 where the revocation was due in part because of a violation of section 42-4-1301 and one of the offenses giving rise to the revocation occurred on or after July 1, 2000; or

(d) Any person whose privilege to drive was revoked pursuant to subsection (5) of this section.

(1.5) (a) A person whose privilege to drive has been revoked for more than one year because of a violation of any provision of section 42-4-1301 (1) (a), (1) (b), or (2) or has been revoked for more than one year under any provision of section 42-2-126 may voluntarily apply for an early reinstatement with a restricted license under the provisions of this section after the person's privilege to drive has been revoked for one year. The restrictions imposed pursuant to this section shall remain in effect for the longer of one year or the total time period remaining on the license restraint prior to early reinstatement.

(b) (I) To be eligible for early reinstatement with a restricted license pursuant to this subsection (1.5), a person must have satisfied all conditions for reinstatement imposed by law including time periods for non-alcohol-related restraints; except that a person whose license was restrained pursuant to section 42-2-138 may be eligible for early reinstatement under this section so long as the restraint was caused in part by driving activity occurring after an alcohol-related offense and the length of any license restriction under this section includes the period of restraint under section 42-2-138.

(II) Before being eligible for early reinstatement with a restricted license under this section, a person must provide proof of financial responsibility to the department pursuant to the requirements of the "Motor Vehicle Financial Responsibility Act", article 7 of this title. Such person must maintain such proof of financial responsibility with the department for the longer of three years or the period that the person's license is restricted under this section.

(c) No person who has been designated an habitual offender under the provisions of section 42-2-202 for any offense other than a violation of section 42-4-1301, 42-2-138, or 42-4-1401 shall be eligible for a restricted license pursuant to this subsection (1.5).

(d) Repealed.

(1.7) A person required to hold a restricted license pursuant to this section who is a persistent drunk driver as defined in section 42-1-102 (68.5), based on an offense that occurred on or after July 1, 2004, shall be required to hold the restricted license for at least two years prior to being eligible to obtain any other driver's license issued under this article.

(2) (Deleted by amendment, L. 2000, p. 1076, § 4, effective July 1, 2000.)

(3) (a) The department shall issue a restricted license under this section if the department receives from a person described in subsection (1), (1.5), or (1.7) of this section an affidavit stating that the person has obtained at the person's own expense a signed lease agreement for the installation and use of an approved ignition interlock device in each motor vehicle on which the person's name appears on the registration and any other vehicle that the person may drive during the period of the restricted license. A copy of each signed lease agreement shall be attached to the affidavit.

(a.5) (I) Notwithstanding the requirements of paragraph (a) of this subsection (3), the department shall issue a restricted license to any person who is required to hold a restricted license pursuant to subsection (1) of this section who is not the registered owner or co-owner of a motor vehicle if the person submits an affidavit stating that the person is not the owner or co-owner of any motor vehicle and has no access to a motor vehicle in which to install an approved ignition interlock device.

(II) Any restricted license issued pursuant to this paragraph (a.5) shall require that if the license holder becomes an owner or co-owner of a motor vehicle or otherwise has access to a motor vehicle in which an approved ignition interlock device may be installed, he or she shall submit to the department a signed lease agreement for the installation and use of an approved ignition interlock device on such vehicle for a period equal to the remaining period of the restricted license.

(b) The terms of the restricted license shall include that the person shall not drive a motor vehicle other than a vehicle in which an approved ignition interlock device is installed.

(c) The department shall not issue a license under this section that would authorize operation of a commercial motor vehicle as defined in section 42-2-402 (4) until the restriction created by this section has expired.

(4) (a) and (b) Repealed.

(c) The leasing agency for any approved ignition interlock device shall provide monthly monitoring reports for the device to the department to monitor compliance with the provisions of this section. The leasing agency shall check the device at least once every sixty days to ensure that the device is operating and that there has been no tampering with the device. If the leasing agency detects that there has been tampering with the device, the leasing agency shall notify the department of that fact within five days of the detection.

(5) (a) Upon receipt of a conviction under section 42-2-116 (6) (b), the department shall revoke any license of such person issued under this section and shall not reinstate the license for a period of the longer of one year or the remaining period of license restraint imposed prior to the issuance of a license pursuant to this section. A person shall be entitled to a hearing on the question of whether the revocation is sustained and the length of the ineligibility.

(b) Upon receipt of a record other than a conviction described in paragraph (a) of this subsection (5) indicating that any person who is subject to the restrictions of this section has operated a motor vehicle other than a vehicle in which an approved ignition interlock device is installed or has circumvented or attempted to circumvent the proper use of an approved ignition interlock device, the department may revoke any license of such person issued under this section and not reinstate the license for a period of one year or the remaining period of license restraint imposed prior to the issuance of a license pursuant to this section, whichever is longer. A person shall be entitled to a hearing on the question of whether the license should be revoked and the length of the ineligibility.

(c) If a lease for an approved ignition interlock device is terminated for any reason prior to the expiration of the period of the restriction and no other such lease has been provided by the licensee, the department shall notify the licensee that the license shall be suspended unless and until a new signed lease agreement for the remaining period of the restriction is filed with the department.

(d) If the monthly monitoring reports required by paragraph (c) of subsection (4) of this section show that the approved ignition interlock device prevented the operation of the vehicle due to excessive blood alcohol content in three of any

twelve consecutive reporting periods, the restriction on the person's license shall be extended for an additional twelve months after the expiration of the existing restriction. The department shall notify the person that the ignition interlock restriction provision is being extended and that any license shall be suspended unless the person provides a new signed lease agreement for the use of an approved ignition interlock device for the extended period. The person shall be entitled to a hearing on the extension of the restriction. Based upon findings at the hearing, including aggravating and mitigating factors, the hearing office may sustain the extension, rescind the extension, or reduce the period of extension.

(6) The department may promulgate rules to implement the provisions of this section.

(7) (a) For the purposes of this section, "approved ignition interlock device" means a device approved by the department of public health and environment that is installed in a motor vehicle and that measures the breath alcohol content of the driver before a vehicle is started and that periodically requires additional breath samples during vehicle operation. The device may not allow a motor vehicle to be started or to continue normal operation if the device measures an alcohol level above the level established by the department of public health and environment.

(b) The state board of health may promulgate rules to implement the provisions of this subsection (7) concerning approved ignition interlock devices.

42-2-135. Right to appeal

(1) Every person finally denied a license or identification card, whose identification card has been finally cancelled, or whose license has been finally cancelled, suspended, or revoked by or under the authority of the department may, within thirty days thereafter, obtain judicial review in accordance with section 24-4-106, C.R.S.; except that the venue for such judicial review shall be in the county of residence of the person seeking judicial review.

(2) The district attorney of the judicial district in which review is applied for pursuant to this section, upon request of the attorney general, shall represent the department.

42-2-116. Restricted license

(1) The department, upon issuing a driver's or minor driver's license or an instruction permit, has authority, whenever good cause appears, to impose restrictions, limitations, or conditions which are suitable to the licensee's driving ability with respect to the type of special mechanical control device required on a motor vehicle which the licensee may operate or which limit the right of the licensee to drive a motor vehicle except when such licensee is required to drive to and from the licensee's place of employment or to perform duties within the course of employment or to impose such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(2) The department either may issue a special restricted license or must set forth such restrictions, limitations, or conditions upon the usual license form issued to the applicant.

(3) The department, upon receiving satisfactory evidence of any violation of the restrictions, limitations, or conditions of such license, may cancel or suspend such restricted license, but the licensee shall be entitled to a hearing as upon a suspension or revocation under this article.

(4) No person shall operate a motor vehicle upon a highway or elsewhere within this state in any manner in violation of

the restrictions, limitations, or conditions imposed in a special restricted license, in a driver's or minor driver's license, or in an instruction permit issued to such person by the department or by another state or country.

(5) The department is authorized after examination to issue a restricted license to a mentally ill or developmentally disabled person, containing such restrictions as may be imposed upon said person by a court pursuant to part 3 or part 4 of article 14 of title 15, C.R.S., or section 27-10-109 (4) or 27-10-125, C.R.S.

(6) (a) Except as otherwise provided in paragraph (b) of this subsection (6), any person who violates any provision of this section commits a class A traffic infraction.

(b) Any person whose privilege to drive is restricted to the operation of a motor vehicle in which an approved ignition interlock device is installed pursuant to section 42-2-132.5, who operates a motor vehicle other than a motor vehicle in which an approved ignition interlock device is installed or who circumvents or attempts to circumvent the proper use of an approved ignition interlock device commits a class 1 traffic misdemeanor.

(7) Whenever a peace officer issues a citation pursuant to paragraph (b) of subsection (6) of this section, the peace officer shall immediately confiscate the license, shall file an incident report on a form provided by the department, and shall not permit the driver to continue to operate the motor vehicle.

(8) No court shall accept a plea of guilty to another offense from a person charged with a violation of subsection (6) (a) of this section; except that the court may accept a plea of guilty to another offense 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 offense.

42-2-126.3. Tampering with an ignition interlock device

(1) No person may intercept, bypass, or interfere with or aid any other person in intercepting, bypassing, or interfering with an ignition interlock device for the purpose of preventing or hindering the lawful operation or purpose of the ignition interlock device required under section 42-2-132.5.

(2) No person may drive a motor vehicle in which an ignition interlock device is installed pursuant to section 42-2-132.5 if the person has knowledge that any person has intercepted, bypassed, or interfered with the ignition interlock device.

(3) Any person violating any provision of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

42-2-132. Period of suspension or revocation

(1) The department shall not suspend a driver's or minor driver's license to drive a motor vehicle on the public highways for a period of more than one year, except as permitted under sections 42-2-127 (9) and 42-2-138 and except for noncompliance with the provisions of subsection (4) of this section or section 42-7-406, or both.

(2) (a) (I) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked is not entitled to apply for a probationary license, and, except as provided in paragraph (b) of this subsection (2) and in sections 42-2-125, 42-2-126, 42-2-138, 42-2-205, and 42-7-406, such person is not entitled to make application for a new license until the expiration of one year from the date on which the revoked license was surrendered to and received by the

department; then such person may make application for a new license as provided by law.

(II) (A) Following the period of revocation set forth in this subsection (2), the department shall not issue a new license unless and until it is satisfied that such person has demonstrated knowledge of the laws and driving ability through the appropriate motor vehicle testing process and that such person whose license was revoked pursuant to section 42-2-125 for an alcohol- or drug-related driving offense has completed not less than a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3.

(B) If the person was determined to be in violation of section 42-2-126 (2) (a) (I) and the person had a blood alcohol level, as shown by analysis of such person's blood or breath, that was 0.20 or more grams of alcohol per one hundred milliliters of blood or 0.20 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving; or if the person's driving record otherwise indicates a designation as a persistent drunk driver as defined in section 42-1-102 (68.5), the department shall require such person to complete a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3.

(C) If the total period of license restraint under this subparagraph (II) is not sufficient to allow for the completion of level II alcohol and drug education and treatment, or the documentation of completion of such education and treatment is incomplete at the time of reinstatement, proof of current enrollment in a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3, on a form approved by the department, shall be filed with the department.

(III) In the case of a minor driver whose license has been revoked as a result of one conviction for any offense provided for in section 42-4-1301 (1) or (2), the minor driver, unless otherwise required after an evaluation made by an alcohol and drug evaluation specialist certified by the division of alcohol and drug abuse, must complete a level I alcohol and drug education program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301.3.

(IV) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked under section 42-2-125 (1) (g) (I) or (1) (i) or 42-2-203 where the revocation was due in part to a violation of section 42-4-1301 shall be required to present an affidavit stating that the person has obtained at the person's own expense a signed lease agreement for the installation and use of an approved ignition interlock device, as defined in section 42-2-132.5 (7), in each motor vehicle on which the person's name appears on the registration and any other vehicle that the person may drive during the period of the restricted license and a copy of each signed lease agreement.

(V) The department shall take into consideration any probationary terms imposed on such person by any court in determining whether any revocation shall be continued.

(b) Any person whose license or privilege to drive a motor vehicle on the public highways is suspended pursuant to section 42-2-127.3 for conviction of a drug offense shall have such person's driver's license suspended for a period of one year for each such conviction; except that the period of suspension shall be three months if such person has not previously been convicted of a drug offense which is grounds for driver's license or privilege suspension pursuant to section 42-2-127.3. Any suspension of a person's driver's license for conviction of a drug offense pursuant to section 42-2-127.3 shall begin upon conviction. Each subsequent conviction for such a drug offense occurring while a person's driver's license is already revoked or suspended for such a drug offense shall extend the period of revocation or suspension for an additional year.

(3) Any person making false application for a new license before the expiration of the period of suspension or revocation

commits a class 2 misdemeanor traffic offense. The department shall notify the district attorney's office in the county where such violation occurred, in writing, of all violations of this section.

(4) (a) (I) Any person whose license or other privilege to operate a motor vehicle in this state has been suspended, cancelled, or revoked, pursuant to either this article or article 4 or 7 of this title, shall pay a restoration fee of sixty dollars to the executive director of the department prior to the issuance to such person of a new license or the restoration of such license or privilege.

(II) Notwithstanding the amount specified for the fee in subparagraph (I) of this paragraph (a), the executive director of the department by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director of the department by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

(b) All restoration fees collected pursuant to this subsection (4) shall be transmitted to the state treasurer, who shall credit the same to the driver's license administrative revocation account in the highway users tax fund, which account is hereby created. The moneys in the account shall be subject to annual appropriation by the general assembly for the direct and indirect costs incurred by the department in the administration of drivers' license restraints pursuant to either this article or article 4 or article 7 of this title, including, but not limited to, the direct and indirect costs of providing administrative hearings under this title, without the use of moneys from the general fund. At the end of each fiscal year, any unexpended and unencumbered moneys remaining in the account shall be transferred out of the account and credited to the highway users tax fund.

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 - 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.

(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.

(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.

(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.

(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

(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 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 amendment, L. 2002, p. 1898, § 2, effective 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 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 twenty-five dollars and not more than five hundred dollars for programs to address persistent drunk drivers. 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 42-3-130.5.

(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.

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

(II) If a person elects either a blood test or a breath test, such person shall not be permitted to change such election,

and, if such person fails to take and complete, and to cooperate in the completing of, the test elected, such failure shall be deemed to be a refusal to submit to testing. If such 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 such 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 such 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.

(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.

(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, 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 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 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 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.

42-4-1302. Stopping of suspect

A law enforcement officer may stop any person who the officer reasonably suspects is committing or has committed a violation of section 42-4-1301 (1) or (2) and may require the person to give such person's name, address, and an explanation of his or her actions. The stopping shall not constitute an arrest.

42-4-1303. Records - prima facie proof

Official records of the department of public health and environment relating to certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions, and certification of laboratories shall be official records of the state, and copies thereof, attested by the executive director of the department of public health and environment or the director's deputy and accompanied by a certificate bearing the official seal for said department that the executive director or the director's deputy has custody of said records, shall be admissible in all courts of record and shall constitute prima facie proof of the information contained therein. The department seal required under this section may also consist of a rubber stamp producing a facsimile of the seal stamped upon the document.

42-4-1304. Samples of blood or other bodily substance - duties of department of public health and environment

(1) The department of public health and environment shall establish a system for obtaining samples of blood or other bodily substance from the bodies of all pilots in command, motorboat or sailboat operators in command, or drivers and pedestrians fifteen years of age or older who die within four hours after involvement in a crash involving a motor vehicle, a motorboat, a sailboat, or an aircraft. No person having custody of the body of such deceased shall perform any internal embalming procedure until a blood and urine specimen to be tested for alcohol, drug, and carbon monoxide

concentrations has been taken by an appropriately trained person certified by the department of public health and environment. Whenever the driver of the vehicle cannot be immediately determined, such samples shall be obtained from all deceased occupants of the vehicle.

(2) All samples so collected shall be placed in containers of a type designed to preserve the integrity of a sample from the time of collection until it is subjected to analysis.

(3) All samples shall be tested and analyzed in the laboratories of the department of public health and environment, or in any other laboratory approved for this purpose by the department of public health and environment, to determine the amount of alcohol, drugs, and carbon monoxide contained in such samples or the amount of any other substance contained therein as deemed advisable by the department of public health and environment.

(4) The state board of health shall establish and promulgate such administrative regulations and procedures as are necessary to ensure that collection and testing of samples is accomplished to the fullest extent. Such regulations and procedures shall include but not be limited to the following:

(a) The certification of laboratories to ensure that the collection and testing of samples is performed in a competent manner; and

(b) The designation of responsible state and local officials who shall have authority and responsibility to collect samples for testing.

(5) All records of the results of such tests shall be compiled by the department of public health and environment and shall not be public information, but shall be disclosed on request to any interested party in any civil or criminal action arising out of the collision.

(6) All state and local public officials, including investigating law enforcement officers, have authority to and shall follow the procedures established by the department of public health and environment pursuant to this section, including the release of all information to the department of public health and environment concerning such samples and the testing thereof. The Colorado state patrol and the county coroners and their deputies shall assist the department of public health and environment in the administration and collection of such samples for the purposes of this section.

(7) The office of the highway safety coordinator, the department, and the Colorado state patrol shall have access to the results of the tests of such samples taken as a result of a traffic crash for statistical analysis. The division of parks and outdoor recreation shall have access to the results of the tests of such samples taken as a result of a boating accident for statistical analysis.

(8) Failure to perform the required duties as prescribed by this section and by the administrative regulations and procedures resulting therefrom shall be deemed punishable under section 18-8-405, C.R.S.

18-3-106. Vehicular homicide

(1) (a) If a person operates or drives a motor vehicle in a reckless manner, and such conduct is the proximate cause of the death of another, such person commits vehicular homicide.

(b) (I) If a person operates or drives a motor vehicle while under the influence of alcohol or one or more drugs, or a

combination of both alcohol and one or more drugs, and such conduct is the proximate cause of the death of another, such person commits vehicular homicide. This is a strict liability crime.

(II) 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, or the inhalation of any other toxic vapor or vapors as defined in section 18-18-412.

(III) 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 shall not constitute a defense against any charge of violating this subsection (1).

(IV) "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 affect such person to a degree that such 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) Vehicular homicide, in violation of paragraph (a) of this subsection (1), is a class 4 felony. Vehicular homicide, in violation of paragraph (b) of this subsection (1), is a class 3 felony.

(2) In any prosecution for a violation of subsection (1) of this section, the amount of alcohol in the defendant's blood or breath at the time of the commission of the alleged offense, or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, shall give rise to the following presumptions:

(a) If there was at such time 0.05 or less grams of alcohol per one hundred milliliters of blood, or if there was at such time 0.05 or less grams of alcohol per two hundred ten liters of breath, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at such time in excess of 0.05 but less than 0.08 grams of alcohol per one hundred milliliters of blood, or if there was at such time in excess of 0.05 but less than 0.08 grams of alcohol per two hundred ten liters of breath, such fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.

(c) If there was at such time 0.08 or more grams of alcohol per one hundred milliliters of blood, or if there was at such time 0.08 or more grams of alcohol per two hundred ten liters of breath, it shall be presumed that the defendant was under the influence of alcohol.

(3) The limitations of subsection (2) of this section 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.

(4) (a) If a law enforcement officer has probable cause to believe that any person was driving a motor vehicle in violation of paragraph (b) of subsection (1) of this section, such person, upon the request of the law enforcement officer, shall take, and complete, and cooperate in the completing of any test or tests of such person's blood, breath, saliva, or urine for the purpose of determining the alcoholic or drug content within his or her system. The type of test or tests shall be determined by the law enforcement officer requiring the test or tests. If such person refuses to take, or to complete, or to cooperate in the completing of any such test or tests, such test or tests may be performed at the direction of a law

enforcement officer having such probable cause, without such person's authorization or consent. If any person refuses to take or complete, or cooperate in the taking or completing of any test or tests required by this paragraph (a), such person shall be subject to license revocation pursuant to the provisions of section 42-2-126 (2), C.R.S. When such test or tests show that the amount of alcohol in a person's blood was in violation of the limits provided for in section 42-2-126 (2) (a) (I), (2) (a) (I.5), (2) (a) (III), or (2) (a) (IV), C.R.S., such person shall be subject to license revocation pursuant to the provisions of section 42-2-126, C.R.S.

(b) Any person who is required to submit to testing shall cooperate with the person authorized to obtain specimens of his 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.

(c) The tests shall be administered at the direction of a law enforcement officer having probable cause to believe that the person committed a violation of subparagraph (I) of paragraph (b) of subsection (1) of this section and in accordance with rules and regulations prescribed by the state board of health concerning the health of the person being tested and the accuracy of such testing. Strict compliance with such rules and regulations 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. 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.

(d) 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. In any trial for a violation of paragraph (b) of subsection (1) of this section, testimony of a law enforcement officer that he witnessed the taking of a blood specimen by a person who he 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. 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 pursuant to this subsection (4) as a result of the act of obtaining such specimens from any person if such specimens were obtained according to the rules and regulations prescribed by the state board of health; except that such provision shall not relieve any such person from liability for negligence in the obtaining of any specimen sample.

(e) Any person who is dead or unconscious shall be tested to determine the alcohol or drug content of his blood or any drug content of his system as provided in this subsection (4). 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 which 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 which shows the alcohol or drug content of the person's blood or any drug content within his 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 his 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.

(f) If a person refuses to take, or to complete, or to cooperate in the completing of any test or tests as provided in this subsection (4) and such person subsequently stands trial for a violation of subsection (1) (b) of this section, 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 the admission of his refusal to take, or to complete, or to cooperate with the completing of any test or tests.

(g) Notwithstanding any provision in section 42-4-1301.1, C.R.S., concerning requirements which relate to the manner in which tests are administered, the test or tests taken pursuant to the provisions of this section may be used for the purposes of driver's license revocation proceedings under section 42-2-126, C.R.S., and for the purposes of prosecutions for violations of section 42-4-1301 (1) or (2), C.R.S.

(5) 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 his alcohol or drug level. This subsection (5) 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 subsection (5) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

18-3-205. Vehicular assault

(1) (a) If a person operates or drives a motor vehicle in a reckless manner, and this conduct is the proximate cause of serious bodily injury to another, such person commits vehicular assault.

(b) (I) If a person operates or drives a motor vehicle while under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, and this conduct is the proximate cause of a serious bodily injury to another, such person commits vehicular assault. This is a strict liability crime.

(II) 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, or the inhalation of any other toxic vapor or vapors as defined in section 18-18-412.

(III) 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 shall not constitute a defense against any charge of violating this subsection (1).

(IV) "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 affect such person to a degree that such 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) Vehicular assault, in violation of paragraph (a) of this subsection (1), is a class 5 felony. Vehicular assault, in violation of paragraph (b) of this subsection (1), is a class 4 felony.

(2) In any prosecution for a violation of subsection (1) of this section, the amount of alcohol in the defendant's blood or breath at the time of the commission of the alleged offense, or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, shall give rise to the following presumptions:

(a) If there was at such time 0.05 or less grams of alcohol per one hundred milliliters of blood, or if there was at such time 0.05 or less grams of alcohol per two hundred ten liters of breath, it shall be presumed that the defendant was not under the influence of alcohol.

(b) If there was at such time in excess of 0.05 but less than 0.08 grams of alcohol per one hundred milliliters of blood, or if there was at such time in excess of 0.05 but less than 0.08 grams of alcohol per two hundred ten liters of breath, such fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of alcohol.

(c) If there was at such time 0.08 or more grams of alcohol per one hundred milliliters of blood, or if there was at such time 0.08 or more grams of alcohol per two hundred ten liters of breath, it shall be presumed that the defendant was under the influence of alcohol.

(3) The limitations of subsection (2) of this section 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.

(4) (a) If a law enforcement officer has probable cause to believe that any person was driving a motor vehicle in violation of paragraph (b) of subsection (1) of this section, such person, upon the request of the law enforcement officer, shall take, and complete, and cooperate in the completing of any test or tests of such person's blood, breath, saliva, or urine for the purpose of determining the alcoholic or drug content within his or her system. The type of test or tests shall be determined by the law enforcement officer requiring the test or tests. If such person refuses to take, or to complete, or to cooperate in the completing of any such test or tests, such test or tests may be performed at the direction of a law enforcement officer having such probable cause, without such person's authorization or consent. If any person refuses to take, or to complete, or to cooperate in the taking or completing of any test or tests required by this paragraph (a), such person shall be subject to license revocation pursuant to the provisions of section 42-2-126 (2), C.R.S. When such test or tests show that the amount of alcohol in a person's blood was in violation of the limits provided for in section 42-2-126 (2) (a) (I), (2) (a) (I.5), (2) (a) (III), or (2) (a) (IV), C.R.S., such person shall be subject to license revocation pursuant to the provisions of section 42-2-126, C.R.S.

(b) Any person who is required to submit to testing shall cooperate with the person authorized to obtain specimens of his 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.

(c) The tests shall be administered at the direction of a law enforcement officer having probable cause to believe that the person committed a violation of subparagraph (I) of paragraph (b) of subsection (1) of this section and in accordance

with rules and regulations prescribed by the state board of health concerning the health of the person being tested and the accuracy of such testing. Strict compliance with such rules and regulations 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. 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.

(d) 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. In any trial for a violation of paragraph (b) of subsection (1) of this section, testimony of a law enforcement officer that he witnessed the taking of a blood specimen by a person who he 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. 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 pursuant to this subsection (4) as a result of the act of obtaining such specimens from any person if such specimens were obtained according to the rules and regulations prescribed by the state board of health; except that such provision shall not relieve any such person from liability for negligence in the obtaining of any specimen sample.

(e) Any person who is dead or unconscious shall be tested to determine the alcohol or drug content of his blood or any drug content of his system as provided in this subsection (4). 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 which 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 which shows the alcohol or drug content of the person's blood or any drug content within his 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 his 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.

(f) If a person refuses to take, or to complete, or to cooperate in the completing of any test or tests as provided in this subsection (4) and such person subsequently stands trial for a violation of subsection (1) (b) of this section, 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 the admission of his refusal to take, or to complete, or to cooperate with the completing of any test or tests.

(g) Notwithstanding any provision in section 42-2-1301.1, C.R.S., concerning requirements which relate to the manner in which tests are administered, the test or tests taken pursuant to the provisions of this section may be used for the purposes of driver's license revocation proceedings under section 42-2-126, C.R.S., and for the purposes of prosecutions

for violations of section 42-4-1301 (1) or (2), C.R.S.

(5) 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 his alcohol or drug level. This subsection (5) 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 subsection (5) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.