

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.