

1 **ENHANCED PENALTIES FOR HIGH BLOOD**

2 **ALCOHOL CONTENT IN DRIVERS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Nora B. Stephens**

6 AN ACT RELATING TO MOTOR VEHICLES; AMENDING DRIVING UNDER THE
7 INFLUENCE PENALTY PROVISIONS.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **41-6-44**, as last amended by Chapters 33, 226 and 258, Laws of Utah 1999

11 *Be it enacted by the Legislature of the state of Utah:*

12 Section 1. Section **41-6-44** is amended to read:

13 **41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe**
14 **blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal**
15 **punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.**

16 (1) As used in this section:

17 (a) "prior conviction" means any conviction for a violation of:

18 (i) this section;

19 (ii) alcohol-related reckless driving under Subsections (9) and (10);

20 (iii) local ordinances similar to this section or alcohol-related reckless driving adopted in
21 compliance with Section 41-6-43;

22 (iv) automobile homicide under Section 76-5-207; or

23 (v) statutes or ordinances in effect in any other state, the United States, or any district,
24 possession, or territory of the United States which would constitute a violation of this section or
25 alcohol-related reckless driving if committed in this state, including punishments administered
26 under 10 U.S.C. Sec. 815;

27 (b) "serious bodily injury" means bodily injury that creates or causes serious permanent

28 disfigurement, protracted loss or impairment of the function of any bodily member or organ, or
29 creates a substantial risk of death;

30 (c) a violation of this section includes a violation under a local ordinance similar to this
31 section adopted in compliance with Section 41-6-43; and

32 (d) the standard of negligence is that of simple negligence, the failure to exercise that
33 degree of care that an ordinarily reasonable and prudent person exercises under like or similar
34 circumstances.

35 (2) (a) A person may not operate or be in actual physical control of a vehicle within this
36 state if the person:

37 (i) has sufficient alcohol in his body that a chemical test given within two hours of the
38 alleged operation or physical control shows that the person has a blood or breath alcohol
39 concentration of .08 grams or greater; or

40 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and
41 any drug to a degree that renders the person incapable of safely operating a vehicle.

42 (b) The fact that a person charged with violating this section is or has been legally entitled
43 to use alcohol or a drug is not a defense against any charge of violating this section.

44 (c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100
45 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol
46 per 210 liters of breath.

47 (3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty
48 of a:

49 (i) class B misdemeanor; or

50 (ii) class A misdemeanor if the person:

51 (A) has also inflicted bodily injury upon another as a proximate result of having operated
52 the vehicle in a negligent manner; or

53 (B) had a passenger under 16 years of age in the vehicle at the time of the offense.

54 (b) A person convicted of a violation of Subsection (2) is guilty of a third degree felony
55 if the person has also inflicted serious bodily injury upon another as a proximate result of having
56 operated the vehicle in a negligent manner.

57 (4) (a) As part of any sentence imposed the court shall, upon a first conviction, impose a
58 mandatory jail sentence of not less than 48 consecutive hours.

59 (b) The court may, as an alternative to all or part of a jail sentence, require the person to:
60 (i) work in a compensatory-service work program for not less than 24 hours; or
61 (ii) participate in home confinement through the use of electronic monitoring in
62 accordance with Subsection (13).

63 (c) In addition to the jail sentence, compensatory-service work program, or home
64 confinement, the court shall:

65 (i) order the person to participate in an assessment and educational series at a licensed
66 alcohol or drug dependency rehabilitation facility, as appropriate; and

67 (ii) impose a fine of not less than \$700.

68 (d) For a violation committed after July 1, 1993, the court may order the person to obtain
69 treatment at an alcohol or drug dependency rehabilitation facility if the licensed alcohol or drug
70 dependency rehabilitation facility determines that the person has a problem condition involving
71 alcohol or drugs.

72 (5) (a) If a person is convicted under Subsection (2) within six years of a prior conviction
73 under this section, the court shall as part of any sentence impose a mandatory jail sentence of not
74 less than 240 consecutive hours.

75 (b) The court may, as an alternative to all or part of a jail sentence, require the person to:

76 (i) work in a compensatory-service work program for not less than 80 hours; or

77 (ii) participate in home confinement through the use of electronic monitoring in
78 accordance with Subsection (13).

79 (c) In addition to the jail sentence, compensatory-service work program, or home
80 confinement, the court shall:

81 (i) order the person to participate in an assessment and educational series at a licensed
82 alcohol or drug dependency rehabilitation facility, as appropriate; and

83 (ii) impose a fine of not less than \$800.

84 (d) The court may order the person to obtain treatment at an alcohol or drug dependency
85 rehabilitation facility.

86 (6) (a) A third or subsequent conviction for a violation committed within six years of two
87 or more prior convictions under this section is a third degree felony.

88 (b) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison
89 sentence and places the defendant on probation the court shall impose:

- 90 (i) a fine of not less than \$1,500;
- 91 (ii) a mandatory jail sentence of not less than 1,000 hours; and
- 92 (iii) an order requiring the person to obtain treatment at an alcohol or drug dependency
- 93 rehabilitation program providing intensive care or inpatient treatment and long-term closely
- 94 supervised follow-through after treatment.

95 (c) In addition to the penalties required under Subsection (6)(b), the court may require the

96 person to participate in home confinement through the use of electronic monitoring in accordance

97 with Subsection (13).

98 (7) (a) The mandatory portion of any sentence required under this section may not be

99 suspended and the convicted person is not eligible for parole or probation until any sentence

100 imposed under this section has been served. Probation or parole resulting from a conviction for

101 a violation under this section may not be terminated.

102 (b) The department may not reinstate any license suspended or revoked as a result of the

103 conviction under this section, until the convicted person has furnished evidence satisfactory to the

104 department that:

105 (i) all required alcohol or drug dependency assessment, education, treatment, and

106 rehabilitation ordered for a violation committed after July 1, 1993, have been completed;

107 (ii) all fines and fees including fees for restitution and rehabilitation costs assessed against

108 the person have been paid, if the conviction is a second or subsequent conviction for a violation

109 committed within six years of a prior violation; and

110 (iii) the person does not use drugs in any abusive or illegal manner as certified by a

111 licensed alcohol or drug dependency rehabilitation facility, if the conviction is for a third or

112 subsequent conviction for a violation committed within six years of two prior violations committed

113 after July 1, 1993.

114 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to

115 order a convicted person to: participate in an assessment and educational series at a licensed

116 alcohol or drug dependency rehabilitation facility; obtain, in the discretion of the court, treatment

117 at an alcohol or drug dependency rehabilitation facility; obtain, mandatorily, treatment at an

118 alcohol or drug dependency rehabilitation facility; or do a combination of those things, apply to

119 a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

120 (ii) The court shall render the same order regarding education or treatment at an alcohol

121 or drug dependency rehabilitation facility, or both, in connection with a first, second, or subsequent
122 conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in
123 connection with applying respectively, the first, second, or subsequent conviction requirements of
124 Subsections (4), (5), and (6).

125 (b) Any alcohol or drug dependency rehabilitation program and any community-based or
126 other education program provided for in this section shall be approved by the Department of
127 Human Services.

128 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a
129 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section
130 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section,
131 the prosecution shall state for the record a factual basis for the plea, including whether or not there
132 had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection
133 with the violation.

134 (ii) The statement is an offer of proof of the facts that shows whether there was
135 consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the
136 violation.

137 (b) The court shall advise the defendant before accepting the plea offered under this
138 Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

139 (c) The court shall notify the department of each conviction of Section 41-6-44.6 or
140 41-6-45 entered under this Subsection (9).

141 (10) A peace officer may, without a warrant, arrest a person for a violation of this section
142 when the officer has probable cause to believe the violation has occurred, although not in his
143 presence, and if the officer has probable cause to believe that the violation was committed by the
144 person.

145 (11) (a) The Department of Public Safety shall:

146 (i) suspend for 90 days the operator's license of a person convicted for the first time under
147 Subsection (2);

148 (ii) revoke for one year the license of a person convicted of any subsequent offense under
149 Subsection (2) if the violation is committed within a period of six years from the date of the prior
150 violation; and

151 (iii) suspend or revoke the license of a person as ordered by the court under Subsection

152 (12).

153 (b) The department shall subtract from any suspension or revocation period the number
154 of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the
155 previous suspension was based on the same occurrence upon which the record of conviction is
156 based.

157 (12) (a) In addition to any other penalties provided in this section, a court may order the
158 operator's license of a person who is convicted of a violation of Subsection (2) to be suspended
159 or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways
160 those persons who have shown they are safety hazards.

161 (b) If the court suspends or revokes the person's license under this Subsection (12)(b), the
162 court shall prepare and send to the Driver License Division of the Department of Public Safety an
163 order to suspend or revoke that person's driving privileges for a specified period of time.

164 (13) (a) If the court orders a person to participate in home confinement through the use of
165 electronic monitoring, the electronic monitoring shall alert the appropriate corrections, probation
166 monitoring agency, law enforcement units, or contract provider of the defendant's whereabouts.

167 (b) The electronic monitoring device shall be used under conditions which require:

168 (i) the person to wear an electronic monitoring device at all times;

169 (ii) that a device be placed in the home or other specified location of the person, so that
170 the person's compliance with the court's order may be monitored; and

171 (iii) the person to pay the costs of the electronic monitoring.

172 (c) The court shall order the appropriate entity described in Subsection (13)(e) to place an
173 electronic monitoring device on the person and install electronic monitoring equipment in the
174 residence of the person or other specified location.

175 (d) The court may:

176 (i) require the person's electronic home monitoring device to include [~~an alcohol detection~~
177 ~~breathalyzer~~] a substance abuse testing instrument;

178 (ii) restrict the amount of alcohol the person may consume during the time the person is
179 subject to home confinement;

180 (iii) set specific time and location conditions that allow the person to attend school
181 educational classes, or employment and to travel directly between those activities and the person's
182 home; and

183 (iv) waive all or part of the costs associated with home confinement if the person is
184 determined to be indigent by the court.

185 (e) The electronic monitoring described in this section may either be administered directly
186 by the appropriate corrections agency, probation monitoring agency, or by contract with a private
187 provider.

188 (f) The electronic monitoring provider shall cover the costs of waivers by the court under
189 Subsection (13)(c)(iv).

190 (14) If a person is convicted of a violation of Subsection (2) and there is admissible
191 evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order:

192 (a) treatment as described under Subsection (4)(d), (5)(d), or (6)(b)(iii), then the court shall
193 enter the reasons on the record; and

194 (b) the following penalties, the court shall enter the reasons on the record:

195 (i) the installation of an ignition interlock system as a condition of probation for the person
196 in accordance with Section 41-6-44.7; or

197 (ii) the imposition of home confinement through the use of electronic monitoring in
198 accordance with Subsection (13).

Legislative Review Note

as of 1-7-00 8:31 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel