

DRIVING UNDER THE INFLUENCE PENALTY

AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Karen Hale

This act modifies the Motor Vehicles Code by expanding the felony driving while intoxicated violations.

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

AMENDS:

41-6-44, as last amended by Chapters 333 and 334, Laws of Utah 2000

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

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

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

(1) As used in this section:

(a) "educational series" means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

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

(i) this section;

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

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

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

(v) statutes or ordinances in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of this section or alcohol-related reckless driving if committed in this state, including punishments administered

28 under 10 U.S.C. Sec. 815;

29 (c) "screening and assessment" means a substance abuse addiction and dependency
30 screening and assessment obtained at a substance abuse program that is approved by the Board of
31 Substance Abuse in accordance with Section 62A-8-107;

32 (d) "serious bodily injury" means bodily injury that creates or causes serious permanent
33 disfigurement, protracted loss or impairment of the function of any bodily member or organ, or
34 creates a substantial risk of death;

35 (e) "substance abuse treatment" means treatment obtained at a substance abuse program
36 that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

37 (f) "substance abuse treatment program" means a state licensed substance abuse program;

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

40 (h) the standard of negligence is that of simple negligence, the failure to exercise that
41 degree of care that an ordinarily reasonable and prudent person exercises under like or similar
42 circumstances.

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

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

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

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

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

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

57 (i) class B misdemeanor; or

58 (ii) class A misdemeanor if the person:

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

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

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

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

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

68 (i) work in a compensatory-service work program for not less than 24 hours; or

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

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

73 (i) order the person to participate in a screening and assessment;

74 (ii) order the person to participate in an educational series if the court does not order
75 substance abuse treatment as described under Subsection (4)(d); and

76 (iii) impose a fine of not less than \$700.

77 (d) The court may order the person to obtain substance abuse treatment if the substance
78 abuse treatment program determines that substance abuse treatment is appropriate.

79 (e) The court may order probation for the person in accordance with Subsection (14).

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

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

84 (i) work in a compensatory-service work program for not less than 240 hours; or

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

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

89 (i) order the person to participate in a screening and assessment;

90 (ii) order the person to participate in an educational series if the court does not order
91 substance abuse treatment as described under Subsection (5)(d); and

92 (iii) impose a fine of not less than \$800.

93 (d) The court may order the person to obtain substance abuse treatment if the substance
94 abuse treatment program determines that substance abuse treatment is appropriate.

95 (e) The court may order probation for the person in accordance with Subsection (14).

96 (6) (a) A [~~third or subsequent~~] conviction for a violation of Subsection (2) is a third degree
97 felony if it is committed:

98 (i) within six years of two or more prior convictions under this section [~~is a third degree~~
99 ~~felony.]; or~~

100 (ii) at any time after a conviction of:

101 (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001; or

102 (B) a felony violation under this section that is committed after July 1, 2001.

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

105 (i) a fine of not less than \$1,500; and

106 (ii) a mandatory jail sentence of not less than 1,500 hours.

107 (c) For Subsection (6)(a) or (b), the court shall impose an order requiring the person to
108 obtain a screening and assessment and substance abuse treatment at a substance abuse treatment
109 program providing intensive care or inpatient treatment and long-term closely supervised
110 follow-through after treatment for not less than 240 hours.

111 (d) In addition to the penalties required under Subsection (6)(b), the court may require the
112 person to participate in home confinement through the use of electronic monitoring in accordance
113 with Subsection (13).

114 (7) The mandatory portion of any sentence required under this section may not be
115 suspended and the convicted person is not eligible for parole or probation until any sentence
116 imposed under this section has been served. Probation or parole resulting from a conviction for
117 a violation under this section may not be terminated.

118 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to
119 order a convicted person to: participate in a screening and assessment; and an educational series;
120 obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily, substance

121 abuse treatment; or do a combination of those things, apply to a conviction for a violation of
122 Section 41-6-44.6 or 41-6-45 under Subsection (9).

123 (ii) The court shall render the same order regarding screening and assessment, an
124 educational series, or substance abuse treatment in connection with a first, second, or subsequent
125 conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in
126 connection with applying respectively, the first, second, or subsequent conviction requirements of
127 Subsections (4), (5), and (6).

128 (b) If a person fails to complete all court ordered screening and assessment, educational
129 series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution
130 and treatment costs, the court shall notify the Driver License Division of a failure to comply. Upon
131 receiving the notification, the division shall suspend the person's driving privilege in accordance
132 with Subsections 53-3-221(2) and (3).

133 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a
134 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section
135 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section,
136 the prosecution shall state for the record a factual basis for the plea, including whether or not there
137 had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection
138 with the violation.

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

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

144 (c) The court shall notify the Driver License Division of each conviction of Section
145 41-6-44.6 or 41-6-45 entered under this Subsection (9).

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

150 (11) (a) The Driver License Division shall:

151 (i) suspend for 90 days the operator's license of a person convicted for the first time under

152 Subsection (2);

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

156 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
157 (12).

158 (b) The Driver License Division shall subtract from any suspension or revocation period
159 the number of days for which a license was previously suspended under Section 53-3-223 or
160 53-3-231, if the previous suspension was based on the same occurrence upon which the record of
161 conviction is based.

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

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

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

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

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

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

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

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

180 (d) The court may:

181 (i) require the person's electronic home monitoring device to include a substance abuse
182 testing instrument;

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

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

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

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

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

195 (14) (a) If supervised probation is ordered under Subsection (4)(e) or (5)(e):

196 (i) the court shall specify the period of the probation;

197 (ii) the person shall pay all of the costs of the probation; and

198 (iii) the court may order any other conditions of the probation.

199 (b) The court shall provide the probation described in this section by contract with a
200 probation monitoring agency or a private probation provider.

201 (c) The probation provider described in Subsection (14)(b) shall monitor the person's
202 compliance with all conditions of the person's sentence, conditions of probation, and court orders
203 received under this article and shall notify the court of any failure to comply with or complete that
204 sentence or those conditions or orders.

205 (d) (i) The court may waive all or part of the costs associated with probation if the person
206 is determined to be indigent by the court.

207 (ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers
208 by the court under Subsection (14)(d)(i).

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

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

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

214 (i) the installation of an ignition interlock system as a condition of probation for the person
215 in accordance with Section 41-6-44.7; or
216 (ii) the imposition of home confinement through the use of electronic monitoring in
217 accordance with Subsection (13).

Legislative Review Note
as of 12-5-00 2:34 PM

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

Office of Legislative Research and General Counsel