

DUI AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Bradley G. Last

LONG TITLE

Committee Note:

The Transportation Interim Committee recommended this bill.

General Description:

This bill modifies the Motor Vehicles Code and the Uniform Driver License Act by amending provisions relating to driving under the influence.

Highlighted Provisions:

This bill:

- ▶ defines driving under the influence court;
- ▶ provides that certain reports issued by the Driver License Division may not contain evidence of an impaired driving conviction if the reporting court notifies the Driver License Division that the defendant is participating in or has completed the program of a driving under the influence court with exception for a CDL license holder or a violation that occurred in a commercial vehicle;
- ▶ provides that if an impaired driving conviction is amended to a driving under the influence conviction in certain circumstances, the Driver License Division shall start the applicable suspension or revocation on the date of the amended conviction and may not subtract any time for which the license was previously suspended or revoked;
- ▶ requires the Driver License Division to reinstate a person's driver license prior to completion of a certain 90-day suspension period immediately upon receiving



28 written verification of the person's conviction of impaired driving if:

29 • the written verification is received prior to completion of the suspension period;

30 and

31 • the reporting court notifies the Driver License Division that the defendant is

32 participating in or has successfully completed the program of a driving under the

33 influence court; and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **41-6a-501**, as last amended by Laws of Utah 2008, Chapter 226

42 **41-6a-502.5**, as enacted by Laws of Utah 2008, Chapter 226

43 **41-6a-509**, as enacted by Laws of Utah 2005, Chapter 2

44 **53-3-223**, as last amended by Laws of Utah 2008, Chapters 3, 226, and 304



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

47 Section 1. Section **41-6a-501** is amended to read:

48 **41-6a-501. Definitions.**

49 (1) As used in this part:

50 (a) "Assessment" means an in-depth clinical interview with a licensed mental health

51 therapist:

52 (i) used to determine if a person is in need of:

53 (A) substance abuse treatment that is obtained at a substance abuse program;

54 (B) an educational series; or

55 (C) a combination of Subsections (1)(a)(i)(A) and (B); and

56 (ii) that is approved by the Board of Substance Abuse and Mental Health in accordance

57 with Section 62A-15-105.

58 (b) "Driving under the influence court" means a court that is approved as a driving

59 under the influence court by the Utah Judicial Council according to standards established by
60 the Judicial Council.

61 [~~b~~] (c) "Drug" or "drugs" means:

62 (i) a controlled substance as defined in Section 58-37-2;

63 (ii) a drug as defined in Section 58-17b-102; or

64 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the
65 human body, can impair the ability of a person to safely operate a motor vehicle.

66 [~~e~~] (d) "Educational series" means an educational series obtained at a substance abuse
67 program that is approved by the Board of Substance Abuse and Mental Health in accordance
68 with Section 62A-15-105.

69 [~~d~~] (e) "Negligence" means simple negligence, the failure to exercise that degree of
70 care that an ordinarily reasonable and prudent person exercises under like or similar
71 circumstances.

72 [~~e~~] (f) "Screening" means a preliminary appraisal of a person:

73 (i) used to determine if the person is in need of:

74 (A) an assessment; or

75 (B) an educational series; and

76 (ii) that is approved by the Board of Substance Abuse and Mental Health in accordance
77 with Section 62A-15-105.

78 [~~f~~] (g) "Serious bodily injury" means bodily injury that creates or causes:

79 (i) serious permanent disfigurement;

80 (ii) protracted loss or impairment of the function of any bodily member or organ; or

81 (iii) a substantial risk of death.

82 [~~g~~] (h) "Substance abuse treatment" means treatment obtained at a substance abuse
83 program that is approved by the Board of Substance Abuse and Mental Health in accordance
84 with Section 62A-15-105.

85 [~~h~~] (i) "Substance abuse treatment program" means a state licensed substance abuse
86 program.

87 [~~i~~] (j) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in
88 Section 41-6a-102; and

89 (ii) "Vehicle" or "motor vehicle" includes:

90 (A) an off-highway vehicle as defined under Section 41-22-2; and
91 (B) a motorboat as defined in Section 73-18-2.
92 (2) As used in Section 41-6a-503:
93 (a) "Conviction" means any conviction for a violation of:
94 (i) driving under the influence under Section 41-6a-502;
95 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a
96 combination of both-related reckless driving under:
97 (I) Section 41-6a-512; and
98 (II) Section 41-6a-528; or
99 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
100 41-6a-502.5;
101 (iii) driving with any measurable controlled substance that is taken illegally in the body
102 under Section 41-6a-517;
103 (iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination
104 of both-related reckless driving, or impaired driving under Section 41-6a-502.5 adopted in
105 compliance with Section 41-6a-510;
106 (v) automobile homicide under Section 76-5-207;
107 (vi) Subsection 58-37-8(2)(g);
108 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of
109 conviction is reduced under Section 76-3-402; or
110 (viii) statutes or ordinances previously in effect in this state or in effect in any other
111 state, the United States, or any district, possession, or territory of the United States which
112 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
113 both-related reckless driving if committed in this state, including punishments administered
114 under 10 U.S.C. Sec. 815.
115 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)
116 through (viii) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,
117 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently
118 reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of:
119 (i) enhancement of penalties under:
120 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and

121 (B) automobile homicide under Section 76-5-207; and
122 (ii) expungement under Section 77-18-12.

123 Section 2. Section **41-6a-502.5** is amended to read:

124 **41-6a-502.5. Impaired driving -- Penalty -- Sentencing requirements.**

125 (1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of
126 Section 41-6a-502 committed on or after July 1, 2008, may be entered as a conviction of
127 impaired driving under this section if:

128 (a) the defendant completes court ordered probation requirements; or

129 (b) (i) the prosecutor agrees as part of a negotiated plea; and

130 (ii) the court finds the plea to be in the interest of justice.

131 (2) A conviction entered under this section is a class B misdemeanor.

132 (3) (a) (i) If the entry of an impaired driving plea is based on successful completion of
133 probation under Subsection (1)(a), the court shall enter the conviction at the time of the plea.

134 (ii) If the defendant fails to appear before the court and establish successful completion
135 of the court ordered probation requirements under Subsection (1)(a), the court shall enter an
136 amended conviction of Section 41-6a-502.

137 (iii) The date of entry of the amended order under Subsection (3)(a)(ii) is the date of
138 conviction.

139 (b) The court may enter a conviction of impaired driving immediately under
140 Subsection (1)(b).

141 (4) For purposes of Section 76-3-402, the entry of a plea to a class B misdemeanor
142 violation of Section 41-6a-502 as impaired driving under this section is a reduction of one
143 degree.

144 (5) The court shall notify the Driver License Division of each conviction entered under
145 this section.

146 (6) (a) The provisions in Subsections 41-6a-505(1), (2), and (3) that require a
147 sentencing court to order a convicted person to participate in a screening, an assessment, or an
148 educational series, or obtain substance abuse treatment or do a combination of those things,
149 apply to a conviction entered under this section.

150 (b) The court shall render the same order regarding screening, assessment, an
151 educational series, or substance abuse treatment in connection with a first, second, or

152 subsequent conviction under this section as the court would render in connection with applying
153 respectively, the first, second, or subsequent conviction requirements of Subsection
154 41-6a-505(1), (2), or (3).

155 (7) (a) Except as provided in Subsection (7)(b), a report authorized by Section
156 53-3-104 may not contain any evidence of a conviction for impaired driving in this state if the
157 reporting court notifies the Driver License Division that the defendant is participating in or has
158 successfully completed the program of a driving under the influence court.

159 (b) The provisions of Subsection (7)(a) do not apply to a report concerning:

160 (i) a CDL license holder; or

161 (ii) a violation that occurred in a commercial motor vehicle.

162 Section 3. Section **41-6a-509** is amended to read:

163 **41-6a-509. Driver license suspension or revocation for a driving under the**
164 **influence violation.**

165 (1) (a) The Driver License Division shall:

166 (i) suspend for 90 days the operator's license of a person convicted for the first time
167 under Section 41-6a-502;

168 (ii) revoke for one year the license of a person convicted of any subsequent offense
169 under Section 41-6a-502 or if the person has a prior conviction as defined under Subsection
170 41-6a-501(2) if the violation is committed within a period of ten years from the date of the
171 prior violation; and

172 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
173 (2).

174 (b) The Driver License Division shall subtract from any suspension or revocation
175 period the number of days for which a license was previously suspended under Section
176 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon
177 which the record of conviction is based.

178 (c) If a conviction recorded as impaired driving is amended to a driving under the
179 influence conviction under Section 41-6a-502 in accordance with Subsection

180 41-6a-502.5(3)(a)(ii), the Driver License Division:

181 (i) may not subtract from any suspension or revocation any time for which a license
182 was previously suspended or revoked under Section 53-3-223 or 53-3-231; and

183 (ii) shall start the suspension or revocation time under Subsection (1)(a) on the date of
184 the amended conviction.

185 (2) (a) (i) In addition to any other penalties provided in this section, a court may order
186 the operator's license of a person who is convicted of a violation of Section 41-6a-502 to be
187 suspended or revoked for an additional period of 90 days, 180 days, one year, or two years to
188 remove from the highways those persons who have shown they are safety hazards.

189 (ii) The additional suspension or revocation period provided in this Subsection (2) shall
190 begin the date on which the individual would be eligible to reinstate the individual's driving
191 privilege for a violation of Section 41-6a-502.

192 (b) If the court suspends or revokes the person's license under this Subsection (2), the
193 court shall prepare and send to the Driver License Division an order to suspend or revoke that
194 person's driving privileges for a specified period of time.

195 (3) (a) The court shall notify the Driver License Division if a person fails to:

196 (i) complete all court ordered:

197 (A) screening;

198 (B) assessment;

199 (C) educational series;

200 (D) substance abuse treatment; and

201 (E) hours of work in a compensatory-service work program; or

202 (ii) pay all fines and fees, including fees for restitution and treatment costs.

203 (b) Upon receiving the notification described in Subsection (3)(a), the division shall
204 suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

205 Section 4. Section **53-3-223** is amended to read:

206 **53-3-223. Chemical test for driving under the influence -- Temporary license --**

207 **Hearing and decision -- Suspension and fee -- Judicial review.**

208 (1) (a) If a peace officer has reasonable grounds to believe that a person may be
209 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a
210 certain blood or breath alcohol concentration and driving under the influence of any drug,
211 alcohol, or combination of a drug and alcohol or while having any measurable controlled
212 substance or metabolite of a controlled substance in the person's body in violation of Section
213 41-6a-517, the peace officer may, in connection with arresting the person, request that the

214 person submit to a chemical test or tests to be administered in compliance with the standards
215 under Section 41-6a-520.

216 (b) In this section, a reference to Section 41-6a-502 includes any similar local
217 ordinance adopted in compliance with Subsection 41-6a-510(1).

218 (2) The peace officer shall advise a person prior to the person's submission to a
219 chemical test that a test result indicating a violation of Section 41-6a-502 or 41-6a-517 shall,
220 and the existence of a blood alcohol content sufficient to render the person incapable of safely
221 driving a motor vehicle may, result in suspension or revocation of the person's license to drive
222 a motor vehicle.

223 (3) If the person submits to a chemical test and the test results indicate a blood or
224 breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer
225 makes a determination, based on reasonable grounds, that the person is otherwise in violation
226 of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of
227 arrest, give notice of the division's intention to suspend the person's license to drive a motor
228 vehicle.

229 (4) (a) When a peace officer gives notice on behalf of the division, the peace officer
230 shall:

- 231 (i) take the Utah license certificate or permit, if any, of the driver;
- 232 (ii) issue a temporary license certificate effective for only 29 days from the date of
233 arrest; and
- 234 (iii) supply to the driver, in a manner specified by the division, basic information
235 regarding how to obtain a prompt hearing before the division.

236 (b) A citation issued by a peace officer may, if provided in a manner specified by the
237 division, also serve as the temporary license certificate.

238 (5) As a matter of procedure, a peace officer shall send to the division within ten
239 calendar days after the day on which notice is provided:

- 240 (a) the person's license certificate;
- 241 (b) a copy of the citation issued for the offense;
- 242 (c) a signed report in a manner specified by the division indicating the chemical test
243 results, if any; and
- 244 (d) any other basis for the peace officer's determination that the person has violated

245 Section 41-6a-502 or 41-6a-517.

246 (6) (a) Upon request in a manner specified by the division, the division shall grant to
247 the person an opportunity to be heard within 29 days after the date of arrest. The request to be
248 heard shall be made within ten calendar days of the day on which notice is provided under
249 Subsection (5).

250 (b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the
251 division in the county in which the arrest occurred.

252 (ii) The division may hold a hearing in some other county if the division and the person
253 both agree.

254 (c) The hearing shall be documented and shall cover the issues of:

255 (i) whether a peace officer had reasonable grounds to believe the person was driving a
256 motor vehicle in violation of Section 41-6a-502 or 41-6a-517;

257 (ii) whether the person refused to submit to the test; and

258 (iii) the test results, if any.

259 (d) (i) In connection with a hearing the division or its authorized agent:

260 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and
261 the production of relevant books and papers; or

262 (B) may issue subpoenas for the attendance of necessary peace officers.

263 (ii) The division shall pay witness fees and mileage from the Transportation Fund in
264 accordance with the rates established in Section 78B-1-119.

265 (e) The division may designate one or more employees to conduct the hearing.

266 (f) Any decision made after a hearing before any designated employee is as valid as if
267 made by the division.

268 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable
269 grounds to believe that the person was driving a motor vehicle in violation of Section
270 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the
271 notice, or if a hearing is not requested under this section, the division shall suspend the person's
272 license or permit to operate a motor vehicle for a period of:

273 (i) 90 days beginning on the 30th day after the date of arrest for a first suspension; or

274 (ii) one year beginning on the 30th day after the date of arrest for a second or

275 subsequent suspension for an offense that occurred within the previous ten years.

276 (b) (i) Notwithstanding the provisions in Subsection (7)(a)(i), the division shall
277 reinstate a person's license prior to completion of the 90 day suspension period imposed under
278 Subsection (7)(a)(i):

279 (A) immediately upon receiving written verification of the person's dismissal of a
280 charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received
281 prior to completion of the suspension period; or

282 (B) no sooner than 60 days beginning on the 30th day after the date of arrest upon
283 receiving written verification of the person's reduction of a charge for a violation of Section
284 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the
285 suspension period.

286 (ii) Notwithstanding the provisions in Subsection (7)(a)(i) or (7)(b)(i), the division
287 shall reinstate a person's license prior to completion of the 90-day suspension period imposed
288 under Subsection (7)(a)(i) immediately upon receiving written verification of the person's
289 conviction of impaired driving under Section 41-6a-502.5 if:

290 (A) the written verification is received prior to completion of the suspension period;
291 and

292 (B) the reporting court notifies the Driver License Division that the defendant is
293 participating in or has successfully completed the program of a driving under the influence
294 court as defined in Section 41-6a-501.

295 [~~(ii)~~] (iii) If a person's license is reinstated under this Subsection (7)(b), the person is
296 required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).

297 [~~(iii)~~] (iv) The driver license reinstatements authorized under this Subsection (7)(b)
298 only apply to a 90 day suspension period imposed under Subsection (7)(a)(i).

299 (8) (a) The division shall assess against a person, in addition to any fee imposed under
300 Subsection 53-3-205(12) for driving under the influence, a fee under Section 53-3-105 to cover
301 administrative costs, which shall be paid before the person's driving privilege is reinstated. This
302 fee shall be cancelled if the person obtains an unappealed division hearing or court decision
303 that the suspension was not proper.

304 (b) A person whose license has been suspended by the division under this section
305 following an administrative hearing may file a petition within 30 days after the suspension for a
306 hearing on the matter which, if held, is governed by Section 53-3-224.

Legislative Review Note
as of 11-20-08 4:36 PM

Office of Legislative Research and General Counsel

S.B. 12 - DUI Amendments

Fiscal Note

2009 General Session
State of Utah

State Impact

Enactment of this bill will require \$1,000 one-time funding for programming costs.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Transportation Fund Restricted	\$0	\$1,000	\$0	\$0	\$0	\$0
Total	\$0	\$1,000	\$0	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.