

HB0250S02 compared with HB0250S01

~~deleted text~~ shows text that was in HB0250S01 but was deleted in HB0250S02.

Inserted text shows text that was not in HB0250S01 but was inserted into HB0250S02.

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Representative Justin L. Fawson proposes the following substitute bill:

DRIVING UNDER THE INFLUENCE PROGRAM AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Justin L. Fawson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to driving under the influence programs.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ authorizes a court to order a person convicted of certain driving under the influence violations to participate in a 24-7 sobriety program;
- ▶ authorizes a court to order a person convicted of a violation of driving with any measurable controlled substance in the body to participate in a 24-7 sobriety program;
- ▶ requires the Driver License Division to shorten certain driver license suspension periods if the division receives notice from a court that a person is participating in a

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24-7 sobriety program;

- ▶ requires the ~~{Office}~~ Department of ~~{the Attorney General}~~ Public Safety to establish and administer a 24-7 sobriety program as a pilot program;
- ▶ specifies procedures and requirements for a 24-7 sobriety program;
- ▶ grants the ~~{Office}~~ Department of ~~{the Attorney General}~~ Public Safety rulemaking authority to make rules to administer the 24-7 sobriety program; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

~~{None}~~ This bill appropriates in fiscal year 2017:

- ▶ to the Attorney General -- Administration, as a one-time appropriation:
 - from the General Fund, (\$100,000); and
- ▶ to the Department of Public Safety -- Department Commissioner's Office, as a one-time appropriation:
 - from the General Fund, \$100,000.

Other Special Clauses:

~~{None}~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

41-6a-505, as last amended by Laws of Utah 2016, Chapter 148

41-6a-509, as last amended by Laws of Utah 2013, Chapter 333

41-6a-517, as last amended by Laws of Utah 2013, Chapter 333

53-3-223, as last amended by Laws of Utah 2014, Chapter 7

ENACTS:

~~{67-5-36}~~ **41-6a-515.5**, Utah Code Annotated 1953

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

Section 1. Section **41-6a-505** is amended to read:

41-6a-505. Sentencing requirements for driving under the influence of alcohol, drugs, or a combination of both violations.

(1) As part of any sentence for a first conviction of Section 41-6a-502:

(a) the court shall:

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- (i) (A) impose a jail sentence of not less than 48 consecutive hours;
- (B) require the person to work in a compensatory-service work program for not less than 48 hours; or
- (C) require the person to participate in home confinement of not fewer than 48 consecutive hours through the use of electronic monitoring in accordance with Section 41-6a-506;
- (ii) order the person to participate in a screening;
- (iii) order the person to participate in an assessment, if it is found appropriate by a screening under Subsection (1)(a)(ii);
- (iv) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (1)(b);
- (v) impose a fine of not less than \$700;
- (vi) order probation for the person in accordance with Section 41-6a-507, if there is admissible evidence that the person had a blood alcohol level of .16 or higher;
- (vii) (A) order the person to pay the administrative impound fee described in Section 41-6a-1406; or
- (B) if the administrative impound fee was paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; or
- (viii) (A) order the person to pay the towing and storage fees described in Section 72-9-603; or
- (B) if the towing and storage fees were paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; and
- (b) the court may:
 - (i) order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate; ~~[or]~~
 - (ii) order probation for the person in accordance with Section 41-6a-507[-];
 - (iii) order the person to participate in a 24-7 sobriety program as defined in Section ~~67-5-36~~41-6a-515.5 if the person is 21 years of age or older; or
 - (iv) order a combination of Subsections (1)(b)(i) through (iii).

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(2) If a person has a prior conviction as defined in Subsection 41-6a-501(2) that is within 10 years of the current conviction under Section 41-6a-502 or the commission of the offense upon which the current conviction is based:

(a) the court shall:

(i) (A) impose a jail sentence of not less than 240 consecutive hours;

(B) require the person to work in a compensatory-service work program for not less than 240 hours; or

(C) require the person to participate in home confinement of not fewer than 240 consecutive hours through the use of electronic monitoring in accordance with Section 41-6a-506;

(ii) order the person to participate in a screening;

(iii) order the person to participate in an assessment, if it is found appropriate by a screening under Subsection (2)(a)(ii);

(iv) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (2)(b);

(v) impose a fine of not less than \$800;

(vi) order probation for the person in accordance with Section 41-6a-507;

(vii) (A) order the person to pay the administrative impound fee described in Section 41-6a-1406; or

(B) if the administrative impound fee was paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; or

(viii) (A) order the person to pay the towing and storage fees described in Section 72-9-603; or

(B) if the towing and storage fees were paid by a party described in Subsection 41-6a-1406(5)(a), other than the person sentenced, order the person sentenced to reimburse the party; and

(b) the court may:

(i) order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate[-];

(ii) order the person to participate in a 24-7 sobriety program as defined in Section

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~~67-5-36~~ 41-6a-515.5 if the person is 21 years of age or older; or

(iii) order a combination of Subsections (2)(b)(i) and (ii).

(3) Under Subsection 41-6a-503(2), if the court suspends the execution of a prison sentence and places the defendant on probation:

(a) the court shall impose:

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

(ii) a jail sentence of not less than 1,500 hours; and

(iii) supervised probation; and

(b) in lieu of Subsection (3)(a)(ii), the court may require the person to participate in home confinement of not fewer than 1,500 hours through the use of electronic monitoring in accordance with Section 41-6a-506.

(4) For Subsection (3)(a) or Subsection 41-6a-503(2)(b), the court:

(a) shall impose an order requiring the person to obtain a screening and assessment for alcohol and substance abuse, and treatment as appropriate[-]; and

(b) may impose an order requiring the person to participate in a 24-7 sobriety program as defined in Section ~~67-5-36~~ 41-6a-515.5 if the person is 21 years of age or older.

(5) (a) The requirements of Subsections (1)(a), (2)(a), (3)(a), and (4) may not be suspended.

(b) Probation or parole resulting from a conviction for a violation under this section may not be terminated.

(6) If a person is convicted of a violation of Section 41-6a-502 and there is admissible evidence that the person had a blood alcohol level of .16 or higher, the court shall order the following, or describe on record why the order or orders are not appropriate:

(a) treatment as described under Subsection (1)(b), (2)(b), or (4); and

(b) one or more of the following:

(i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6a-518;

(ii) the imposition of an ankle attached continuous transdermal alcohol monitoring device as a condition of probation for the person; or

(iii) the imposition of home confinement through the use of electronic monitoring in accordance with Section 41-6a-506.

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Section 2. Section **41-6a-509** is amended to read:

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

(1) The Driver License Division shall, if the person is 21 years of age or older at the time of arrest:

(a) suspend for a period of 120 days the operator's license of a person convicted for the first time under Section 41-6a-502 of an offense committed on or after July 1, 2009; or

(b) revoke for a period of two years the license of a person if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current driving under the influence violation under Section 41-6a-502 is committed:

(A) within a period of 10 years from the date of the prior violation; and

(B) on or after July 1, 2009.

(2) The Driver License Division shall, if the person is 19 years of age or older but under 21 years of age at the time of arrest:

(a) suspend the person's driver license until the person is 21 years of age or for a period of one year, whichever is longer, if the person is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense that was committed on or after July 1, 2011;

(b) deny the person's application for a license or learner's permit until the person is 21 years of age or for a period of one year, whichever is longer, if the person:

(i) is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense committed on or after July 1, 2011; and

(ii) has not been issued an operator license;

(c) revoke the person's driver license until the person is 21 years of age or for a period of two years, whichever is longer, if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current driving under the influence violation under Section 41-6a-502 is committed on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; or

(d) deny the person's application for a license or learner's permit until the person is 21

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years of age or for a period of two years, whichever is longer, if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2);

(ii) the current driving under the influence violation under Section 41-6a-502 is committed on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; and

(iii) the person has not been issued an operator license.

(3) The Driver License Division shall, if the person is under 19 years of age at the time of arrest:

(a) suspend the person's driver license until the person is 21 years of age if the person is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense that was committed on or after July 1, 2009;

(b) deny the person's application for a license or learner's permit until the person is 21 years of age if the person:

(i) is convicted for the first time of a driving under the influence violation under Section 41-6a-502 of an offense committed on or after July 1, 2009; and

(ii) has not been issued an operator license;

(c) revoke the person's driver license until the person is 21 years of age if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current driving under the influence violation under Section 41-6a-502 is committed on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; or

(d) deny the person's application for a license or learner's permit until the person is 21 years of age if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2);

(ii) the current driving under the influence violation under Section 41-6a-502 is committed on or after July 1, 2009, and within a period of 10 years from the date of the prior violation; and

(iii) the person has not been issued an operator license.

(4) The Driver License Division shall suspend or revoke the license of a person as ordered by the court under Subsection (10).

(5) The Driver License Division shall:

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(a) deny, suspend, or revoke the operator's license of a person convicted under Section 41-6a-502 of an offense that was committed prior to July 1, 2009, for the denial, suspension, or revocation periods in effect prior to July 1, 2009; or

(b) deny, suspend, or revoke the operator's license of a person for the denial, suspension, or revocation periods in effect from July 1, 2009, through June 30, 2011, if:

(i) the person was 20 years of age or older but under 21 years of age at the time of arrest; and

(ii) the conviction under Section 41-6a-502 is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011.

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

(7) If a conviction recorded as impaired driving is amended to a driving under the influence conviction under Section 41-6a-502 in accordance with Subsection 41-6a-502.5(3)(a)(ii), the Driver License Division:

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

(b) shall start the suspension or revocation time under Subsection (1) on the date of the amended conviction.

(8) A court that reported a conviction of a violation of Section 41-6a-502 for a violation that occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b) prior to completion of the suspension period if the person:

(a) completes at least six months of the license suspension;

(b) completes a screening;

(c) completes an assessment, if it is found appropriate by a screening under Subsection (8)(b);

(d) completes substance abuse treatment if it is found appropriate by the assessment under Subsection (8)(c);

(e) completes an educational series if substance abuse treatment is not required by an

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assessment under Subsection (8)(c) or the court does not order substance abuse treatment;

(f) has not been convicted of a violation of any motor vehicle law in which the person was involved as the operator of the vehicle during the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b);

(g) has complied with all the terms of the person's probation or all orders of the court if not ordered to probation; and

(h) (i) is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol during the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b); or

(ii) is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol during the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b).

(9) If the court shortens a person's license suspension period in accordance with the requirements of Subsection (8), the court shall forward the order shortening the person's suspension period prior to the completion of the suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b) to the Driver License Division.

(10) (a) (i) In addition to any other penalties provided in this section, a court may order the operator's license of a person who is convicted of a violation of Section 41-6a-502 to be suspended or revoked for an additional period of 90 days, 120 days, 180 days, one year, or two years to remove from the highways those persons who have shown they are safety hazards.

(ii) The additional suspension or revocation period provided in this Subsection (10) shall begin the date on which the individual would be eligible to reinstate the individual's driving privilege for a violation of Section 41-6a-502.

(b) If the court suspends or revokes the person's license under this Subsection (10), the court shall prepare and send to the Driver License Division an order to suspend or revoke that person's driving privileges for a specified period of time.

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

(i) complete all court ordered:

(A) screening;

(B) assessment;

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- (C) educational series;
- (D) substance abuse treatment; and
- (E) hours of work in a compensatory-service work program; or
- (ii) pay all fines and fees, including fees for restitution and treatment costs.

(b) Upon receiving the notification described in Subsection (11)(a), the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

(12) (a) A court that reported a conviction of a violation of Section 41-6a-502 to the Driver License Division may shorten the suspension period imposed under Subsection (1) before completion of the suspension period if the person is participating in or has successfully completed a 24-7 sobriety program as defined in Section ~~67-5-36~~41-6a-515.5.

(b) If the court shortens a person's license suspension period in accordance with the requirements of this Subsection (12), the court shall forward to the Driver License Division the order shortening the person's suspension period.

(c) The court shall notify the Driver License Division if a person fails to complete all requirements of a 24-7 sobriety program.

(d) Upon receiving the notification described in Subsection (12)(c), the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

Section 3. Section ~~41-6a-517~~41-6a-515.5 is enacted to read:

41-6a-515.5. Sobriety program for DUI.

(1) As used in this section:

(a) "24-7 sobriety program" means a 24 hours a day, seven days a week sobriety and drug monitoring program that:

(i) requires an individual to abstain from alcohol or drugs for a period of time;

(ii) requires an individual to submit to random drug testing; and

(iii) requires the individual to be subject to testing to determine the presence of alcohol:

(A) twice a day at a central location where immediate sanctions may be applied;

(B) by continuous remote sensing or transdermal alcohol monitoring by means of an electronic monitoring device that allows timely sanctions to be applied; or

(C) by an alternate method that is approved by the National Highway Traffic Safety Administration.

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(b) (i) "Testing" means a procedure for determining the presence and level of alcohol or a drug in an individual's breath or body fluid, including blood, urine, saliva, or perspiration.

(ii) "Testing" includes any combination of the use of:

(A) breath testing;

(B) drug patch testing;

(C) urinalysis testing;

(D) saliva testing;

(E) continuous remote sensing;

(F) transdermal alcohol monitoring; or

(G) alternate body fluids approved for testing by the commissioner of the department.

(2) (a) The department shall establish and administer a 24-7 sobriety program as a pilot program.

(b) The department shall establish one pilot program with a law enforcement agency that is able to meet the 24-7 sobriety program qualifications and requirements under this section.

(3) (a) The 24-7 sobriety program shall include use of a primary testing methodology for the presence of alcohol or drugs that:

(i) best facilitates the ability to apply immediate sanctions for noncompliance;

(ii) is available at an affordable cost; and

(iii) provides for positive, behavioral reinforcement for program compliance.

(b) Primary testing methods include twice a day, in person breath testing for alcohol at a central location, random drug testing, and other methodologies approved by the commissioner of the department.

(c) In cases of hardship, testing methodologies with timely sanctions for noncompliance may be used.

(d) Hardship testing methodologies under Subsection (3)(c) include:

(i) the use of transdermal alcohol monitoring devices;

(ii) remote breath test devices; and

(iii) other commissioner approved methods for hardship exceptions.

(e) The commissioner shall consider the following factors to determine whether a hardship exception applies under Subsection (3)(c):

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(i) whether a device is available;

(ii) whether the participant is capable of paying the fees and costs associated with transdermal alcohol monitoring or remote breath testing; and

(iii) whether the participant qualifies for a hardship exception from twice-daily breath testing because of one or more of the following:

(A) the participant lives more than a 25-mile radius from a testing site, and submitting to twice-daily breath tests would be unduly burdensome;

(B) the participant's employment requires job performance at a location that is more than a 25-mile radius from a testing site and submitting to twice-daily breath tests would be unduly burdensome;

(C) the participant's schooling is at a location that is more than a 25-mile radius from a testing site and submitting to twice-daily breath tests would be unduly burdensome; or

(D) the participant lives in a county where twice-daily breath testing is not available.

(4) (a) The 24-7 sobriety program shall be supported by evidence of effectiveness and satisfy at least two of the following categories:

(i) the program is included in the federal registry of evidence-based programs and practices;

(ii) the program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome; or

(iii) the program has been documented as effective by informed experts and other sources.

(b) If a law enforcement agency participates in a 24-7 sobriety program, the department shall assist in the creation and administration of the program in the manner provided in this section.

(c) A 24-7 sobriety program shall have at least one testing location and two daily testing times approximately 12 hours apart.

(d) If a person has a prior conviction as defined in Subsection 41-6a-501(2) that is within 10 years of the current conviction under Section 41-6a-502 or the commission of the offense upon which the current conviction is based, the person shall be required to participate in a 24-7 sobriety program for at least one year.

(5) (a) If a law enforcement agency participates in a 24-7 sobriety program, the law

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enforcement agency may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the law enforcement agency pursuant to this section, except that the law enforcement agency's designee may not determine whether an individual is required to participate in the 24-7 sobriety program.

(b) Subject to the requirement in Subsection (4)(c), the law enforcement agency shall establish the testing locations and times for the county.

(6) (a) The commissioner of the department shall establish a data management technology plan for data collection on 24-7 sobriety program participants.

(b) All required data related to participants in the 24-7 sobriety program shall be received into the data management technology plan.

(c) The data collected under this Subsection (6) is owned by the state.

(7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to implement this section.

(b) The rules under Subsection (7)(a) shall:

(i) provide for the nature and manner of testing and the procedures and apparatus to be used for testing;

(ii) establish reasonable participation and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, and deactivation of any testing device;

(iii) require and provide for the approval of a 24-7 sobriety program data management technology plan that shall be used by the department and participating law enforcement agencies to manage testing, data access, fees and fee payments, and any required reports;

(iv) establish a model sanctioning schedule for program noncompliance; and

(v) establish a process for piloting alternate components of the 24-7 sobriety program.

Section 4. Section 41-6a-517 is amended to read:

41-6a-517. Definitions -- Driving with any measurable controlled substance in the body -- Penalties -- Arrest without warrant.

(1) As used in this section:

(a) "Controlled substance" [~~has the same meaning as~~] means the same as that term is defined in Section 58-37-2.

(b) "Practitioner" [~~has the same meaning as~~] means the same as that term is defined in

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Section 58-37-2.

(c) "Prescribe" [~~has the same meaning as~~] means the same as that term is defined in Section 58-37-2.

(d) "Prescription" [~~has the same meaning as~~] means the same as that term is defined in Section 58-37-2.

(2) In cases not amounting to a violation of Section 41-6a-502, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.

(3) It is an affirmative defense to prosecution under this section that the controlled substance was:

- (a) involuntarily ingested by the accused;
- (b) prescribed by a practitioner for use by the accused; or
- (c) otherwise legally ingested.

(4) (a) A person convicted of a violation of Subsection (2) is guilty of a class B misdemeanor.

(b) A person who violates this section is subject to conviction and sentencing under both this section and any applicable offense under Section 58-37-8.

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

(6) The Driver License Division shall, if the person is 21 years of age or older on the date of arrest:

(a) suspend, for a period of 120 days, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2009; or

(b) revoke, for a period of two years, the driver license of a person if:

- (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
- (ii) the current violation under Subsection (2) is committed on or after July 1, 2009,

and within a period of 10 years after the date of the prior violation.

(7) The Driver License Division shall, if the person is 19 years of age or older but under 21 years of age on the date of arrest:

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(a) suspend, until the person is 21 years of age or for a period of one year, whichever is longer, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2011; or

(b) revoke, until the person is 21 years of age or for a period of two years, whichever is longer, the driver license of a person if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and within a period of 10 years after the date of the prior violation.

(8) The Driver License Division shall, if the person is under 19 years of age on the date of arrest:

(a) suspend, until the person is 21 years of age, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2009; or

(b) revoke, until the person is 21 years of age, the driver license of a person if:

(i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

(ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and within a period of 10 years after the date of the prior violation.

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

(10) The Driver License Division shall:

(a) deny, suspend, or revoke a person's license for the denial and suspension periods in effect prior to July 1, 2009, for a conviction of a violation under Subsection (2) that was committed prior to July 1, 2009; or

(b) deny, suspend, or revoke the operator's license of a person for the denial, suspension, or revocation periods in effect from July 1, 2009, through June 30, 2011, if:

(i) the person was 20 years of age or older but under 21 years of age at the time of arrest; and

(ii) the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011.

(11) A court that reported a conviction of a violation of this section for a violation that

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occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension period imposed under Subsection (7)(a) or (8)(a) prior to completion of the suspension period if the person:

- (a) completes at least six months of the license suspension;
- (b) completes a screening;
- (c) completes an assessment, if it is found appropriate by a screening under Subsection (11)(b);
- (d) completes substance abuse treatment if it is found appropriate by the assessment under Subsection (11)(c);
- (e) completes an educational series if substance abuse treatment is not required by the assessment under Subsection (11)(c) or the court does not order substance abuse treatment;
- (f) has not been convicted of a violation of any motor vehicle law in which the person was involved as the operator of the vehicle during the suspension period imposed under Subsection (7)(a) or (8)(a);
- (g) has complied with all the terms of the person's probation or all orders of the court if not ordered to probation; and
- (h) (i) is 18 years of age or older and provides a sworn statement to the court that the person has not consumed a controlled substance not prescribed by a practitioner for use by the person or unlawfully consumed alcohol during the suspension period imposed under Subsection (7)(a) or (8)(a); or
- (ii) is under 18 years of age and has the person's parent or legal guardian provide an affidavit or other sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not consumed a controlled substance not prescribed by a practitioner for use by the person or unlawfully consumed alcohol during the suspension period imposed under Subsection (7)(a) or (8)(a).

(12) If the court shortens a person's license suspension period in accordance with the requirements of Subsection (11), the court shall forward the order shortening the person's license suspension period prior to the completion of the suspension period imposed under Subsection (7)(a) or (8)(a) to the Driver License Division.

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

- (i) complete all court ordered screening and assessment, educational series, and

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substance abuse treatment; or

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

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

(14) The court:

(a) shall order supervised probation in accordance with Section 41-6a-507 for a person convicted under Subsection (2); and

(b) may order a person convicted under Subsection (2) to participate in a 24-7 sobriety program as defined in Section ~~{67-5-36}~~41-6a-515.5 if the person is 21 years of age or older.

(15) (a) A court that reported a conviction of a violation of this section to the Driver License Division may shorten the suspension period imposed under Subsection (6) before completion of the suspension period if the person is participating in or has successfully completed a 24-7 sobriety program as defined in Section ~~{67-5-36}~~41-6a-515.5.

(b) If the court shortens a person's license suspension period in accordance with the requirements of this Subsection (15), the court shall forward to the Driver License Division the order shortening the person's suspension period.

(c) The court shall notify the Driver License Division if a person fails to complete all requirements of a 24-7 sobriety program.

(d) Upon receiving the notification described in Subsection (15)(c), the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

Section ~~{4}~~5. Section 53-3-223 is amended to read:

53-3-223. Chemical test for driving under the influence -- Temporary license -- Hearing and decision -- Suspension and fee -- Judicial review.

(1) (a) If a peace officer has reasonable grounds to believe that a person may be violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a certain blood or breath alcohol concentration and driving under the influence of any drug, alcohol, or combination of a drug and alcohol or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517, the peace officer may, in connection with arresting the person, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6a-520.

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

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

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

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

(i) take the Utah license certificate or permit, if any, of the driver;

(ii) issue a temporary license certificate effective for only 29 days from the date of arrest; and

(iii) supply to the driver, in a manner specified by the division, basic information regarding how to obtain a prompt hearing before the division.

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

(5) As a matter of procedure, a peace officer shall send to the division within 10 calendar days after the day on which notice is provided:

(a) the person's license certificate;

(b) a copy of the citation issued for the offense;

(c) a signed report in a manner specified by the division indicating the chemical test results, if any; and

(d) any other basis for the peace officer's determination that the person has violated Section 41-6a-502 or 41-6a-517.

(6) (a) Upon request in a manner specified by the division, the division shall grant to

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the person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within 10 calendar days of the day on which notice is provided under Subsection (5).

(b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the division in:

(A) the county in which the arrest occurred; or

(B) a county that is adjacent to the county in which the arrest occurred.

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

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

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

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

(iii) the test results, if any.

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

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

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

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

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

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

(7) (a) If, after a hearing, the division determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the notice, or if a hearing is not requested under this section, the division shall:

(i) if the person is 21 years of age or older at the time of arrest and the arrest was made on or after July 1, 2009, suspend the person's license or permit to operate a motor vehicle for a period of:

(A) 120 days beginning on the 30th day after the date of arrest for a first suspension; or

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(B) two years beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or

(ii) if the person is under 21 years of age at the time of arrest and the arrest was made on or after May 14, 2013:

(A) suspend the person's license or permit to operate a motor vehicle:

(I) for a period of six months, beginning on the 30th day after the date of arrest for a first suspension; or

(II) until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or

(B) deny the person's application for a license or learner's permit:

(I) for a period of six months for a first suspension, if the person has not been issued an operator license; or

(II) until the person is 21 years of age or for a period of two years, whichever is longer, beginning on the 30th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years.

(b) The division shall deny or suspend a person's license for the denial and suspension periods in effect:

(i) prior to July 1, 2009, for an offense that was committed prior to July 1, 2009;

(ii) from July 1, 2009, through June 30, 2011, if:

(A) the person was 20 years 6 months of age or older but under 21 years of age at the time of arrest; and

(B) the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011; or

(iii) prior to May 14, 2013, for an offense that was committed prior to May 14, 2013.

(c) (i) Notwithstanding the provisions in Subsection (7)(a)(i)(A), the division shall reinstate a person's license prior to completion of the 120 day suspension period imposed under Subsection (7)(a)(i)(A):

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

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

(ii) Notwithstanding the provisions in Subsection (7)(a)(i)(A) or (7)(b), the division shall reinstate a person's license prior to completion of the 120-day suspension period imposed under Subsection (7)(a)(i)(A) immediately upon receiving written verification of the person's conviction of impaired driving under Section 41-6a-502.5 if:

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

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

(iii) If a person's license is reinstated under this Subsection (7)(c), the person is required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).

(iv) The driver license reinstatements authorized under this Subsection (7)(c) only apply to a 120 day suspension period imposed under Subsection (7)(a)(i)(A).

(8) (a) Notwithstanding the provisions in Subsection (7)(b)(iii), the division shall shorten a person's two-year license suspension period that is currently in effect to a six-month suspension period if:

(i) the driver was under the age of 19 at the time of arrest;

(ii) the offense was a first offense that was committed prior to May 14, 2013; and

(iii) the suspension under Subsection (7)(b)(iii) was based on the same occurrence upon which the following written verifications are based:

(A) a court order shortening the driver license suspension for a violation of Section 41-6a-502 pursuant to Subsection 41-6a-509(8);

(B) a court order shortening the driver license suspension for a violation of Section 41-6a-517 pursuant to Subsection 41-6a-517(11);

(C) a court order shortening the driver license suspension for a violation of Section 32B-4-409;

(D) a dismissal for a violation of Section 41-6a-502, Section 41-6a-517, or Section

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32B-4-409;

(E) a notice of declination to prosecute for a charge under Section 41-6a-502, Section 41-6a-517, or Section 32B-4-409;

(F) a reduction of a charge under Section 41-6a-502, Section 41-6a-517, or Section 32B-4-409; or

(G) other written documentation acceptable to the division.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules establishing requirements for acceptable written documentation to shorten a person's driver license suspension period under Subsection (8)(a)(iii)(G).

(c) If a person's license sanction is shortened under this Subsection (8), the person is required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).

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

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

(10) (a) Notwithstanding the provisions in Subsection (7)(a)(i) or (ii), the division shall reinstate a person's license before completion of the suspension period imposed under Subsection (7)(a)(i) or (ii) if the reporting court notifies the Driver License Division that the defendant is participating in or has successfully completed a 24-7 sobriety program as defined in Section ~~67-5-36~~41-6a-515.5.

(b) If a person's license is reinstated under Subsection (10)(a), the person is required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).

~~Section 5. Section 67-5-36 is enacted to read:~~

~~67-5-36. Sobriety program for DUI.~~

~~(1) As used in this section:~~

~~(a) "24-7 sobriety program" means a 24 hours a day, seven days a week sobriety and drug monitoring program that:~~

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- ~~_____ (i) requires an individual to abstain from alcohol or drugs for a period of time; and~~
- ~~_____ (ii) requires the individual to be subject to testing to determine the presence of alcohol or drugs:~~
 - ~~_____ (A) twice a day at a central location where immediate sanctions may be applied;~~
 - ~~_____ (B) by continuous remote sensing or transdermal alcohol monitoring by means of an electronic monitoring device that allows timely sanctions to be applied; or~~
 - ~~_____ (C) by an alternate method that is approved by the National Highway Traffic Safety Administration.~~

~~_____ (b) "Office" means the Office of the } 6. Appropriation.~~

The following sums of money are appropriated for the fiscal year beginning July 1, 2016, and ending June 30, 2017. These are additions to amounts previously appropriated for fiscal year 2017. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the Legislature appropriates the following sums of money from the funds or accounts indicated for the use and support of the government of the state of Utah.

ITEM 1

To Attorney General }:

- ~~_____ (c) (i) "Testing" means a procedure for determining the presence and level of alcohol or a drug in an individual's breath or body fluid, including blood, urine, saliva, or perspiration.~~
- ~~_____ (ii) "Testing" includes any combination of the use of:~~
 - ~~_____ (A) breath testing;~~
 - ~~_____ (B) drug patch testing;~~
 - ~~_____ (C) urinalysis testing;~~
 - ~~_____ (D) saliva testing;~~
 - ~~_____ (E) continuous remote sensing;~~
 - ~~_____ (F) transdermal alcohol monitoring; or~~
 - ~~_____ (G) alternate body fluids approved for testing by the office.~~
- ~~_____ (2) (a) The office shall establish }~~

From General Fund, One-Time

(\$100,000)

Schedule of Programs:

Administration

(\$100,000)

ITEM 2

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To Public Safety

From General Fund, One-time

\$100,000

Schedule of Programs:

Department Commissioner's Office

\$100,000

The Legislature intends that:

(1) the Department of Public Safety use appropriations under this section to work with a local law enforcement agency to develop and administer a 24-7 sobriety program as a pilot program;

~~_____ (b) The office shall establish one pilot program with a law enforcement agency that is able to meet the; and~~

(2) under Section 63J-1-603, appropriations provided under this section not lapse at the close of fiscal year 2017. The use of any nonlapsing funds is limited to developing and administering a 24-7 sobriety program ~~{qualifications and requirements under this section.~~

~~_____ (3) (a) The 24-7 sobriety program shall include use of a primary testing methodology for the presence of alcohol or drugs that:~~

~~_____ (i) best facilitates the ability to apply immediate sanctions for noncompliance;~~

~~_____ (ii) is available at an affordable cost; and~~

~~_____ (iii) provides for positive, behavioral reinforcement for program compliance.~~

~~_____ (b) Primary testing methods include twice a day, in person breath testing at a central location and other methodologies approved by the office.~~

~~_____ (c) In cases of hardship, testing methodologies with timely sanctions for noncompliance may be used.~~

~~_____ (d) Hardship testing methodologies under Subsection (3)(c) include:~~

~~_____ (i) the use of transdermal alcohol monitoring devices;~~

~~_____ (ii) remote breath test devices; and~~

~~_____ (iii) other office approved methods for hardship exceptions.~~

~~_____ (e) The office shall consider the following factors to determine whether a hardship exception applies under Subsection (3)(c):~~

~~_____ (i) whether a device is available;~~

~~_____ (ii) whether the participant is capable of paying the fees and costs associated with transdermal alcohol monitoring or remote breath testing; and~~

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~~—— (iii) whether the participant qualifies for a hardship exception from twice-daily breath testing because of one or more of the following:~~

~~—— (A) the participant lives more than a 25-mile radius from a testing site, and submitting to twice-daily breath tests would be unduly burdensome;~~

~~—— (B) the participant's employment requires job performance at a location that is more than a 25-mile radius from a testing site and submitting to twice-daily breath tests would be unduly burdensome;~~

~~—— (C) the participant's schooling is at a location that is more than a 25-mile radius from a testing site and submitting to twice-daily breath tests would be unduly burdensome; or~~

~~—— (D) the participant lives in a county where twice-daily breath testing is not available.~~

~~—— (4) (a) The 24-7 sobriety program shall be supported by evidence of effectiveness and satisfy at least two of the following categories:~~

~~—— (i) the program is included in the federal registry of evidence-based programs and practices;~~

~~—— (ii) the program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome; or~~

~~—— (iii) the program has been documented as effective by informed experts and other sources.~~

~~—— (b) If a law enforcement agency participates in a 24-7 sobriety program, the office shall assist in the creation and administration of the program in the manner provided in this section.~~

~~—— (c) A 24-7 sobriety program shall have at least one testing location and two daily testing times approximately 12 hours apart.~~

~~—— (d) If a person has a prior conviction as defined in Subsection 41-6a-501(2) that is within 10 years of the current conviction under Section 41-6a-502 or the commission of the offense upon which the current conviction is based, the person shall be required to participate in a 24-7 sobriety program for at least one year.~~

~~—— (5) (a) If a law enforcement agency participates in a 24-7 sobriety program, the law enforcement agency may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the law enforcement agency pursuant to this section, except that the law enforcement agency's designee may not determine whether an individual is required to participate in the 24-7 sobriety program.~~

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~~—— (b) Subject to the requirement in Subsection (4)(c), the law enforcement agency shall establish the testing locations and times for the county.~~

~~—— (6) (a) The office shall establish a data management technology plan for data collection on 24-7 sobriety program participants.~~

~~—— (b) All required data related to participants in the 24-7 sobriety program shall be received into the data management technology plan.~~

~~—— (c) The data collected under this Subsection (6):~~

~~—— (i) is owned by the state; and~~

~~—— (ii) shall be maintained by the office.~~

~~—— (d) Testing methodologies approved under this section shall be capable of electronically transferring data directly into the data management technology system through an office approved interface.~~

~~—— (7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules to implement this section.~~

~~—— (b) The rules under Subsection (7)(a) shall:~~

~~—— (i) provide for the nature and manner of testing and the procedures and apparatus to be used for testing;~~

~~—— (ii) establish reasonable participation and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, and deactivation of any testing device;~~

~~—— (iii) require and provide for the approval of a 24-7 sobriety program data management technology plan that shall be used by the office and participating law enforcement agencies to manage testing, data access, fees and fee payments, and any required reports;~~

~~—— (iv) establish a model sanctioning schedule for program noncompliance; and~~

~~—— (v) establish a process for piloting alternate components of the 24-7 sobriety program.~~

~~as a pilot program.~~

Section 7. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on July 1, 2017.

(2) Uncodified Section 6, Appropriation, takes effect on May 9, 2017.