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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 extreme DUI:
 - (a) the court shall:
 - (i)
 - (A) impose a jail sentence of not less than five days; or
 - (B) impose a jail sentence of not less than two days in addition to home confinement of not fewer than 30 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506;
 - (ii) order the individual to participate in a screening;
 - (iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (1)(a)(ii);
 - (iv) order the individual 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 individual in accordance with Section 41-6a-507;
 - (vii)
 - (A) order the individual 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(6)(a), other than the individual sentenced, order the individual sentenced to reimburse the party;
 - (viii)
 - (A) order the individual 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(6)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; or
 - (ix) unless the court determines and states on the record that an ignition interlock system is not necessary for the safety of the community and in the best interest of justice, order the installation of an ignition interlock system as described in Section 41-6a-518; and
 - (b) the court may:
 - (i) order the individual to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate;
 - (ii) order the individual to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years old or older; or
 - (iii) order a combination of Subsections (1)(b)(i) and (ii).
- (2)
 - (a) If an individual described in Subsection (1) is participating in a 24-7 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed under Subsection (1)(a).
 - (b) If an individual described in Subsection (1) fails to successfully complete all of the requirements of the 24-7 sobriety program, the court shall impose the suspended jail sentence described in Subsection (2)(a).
- (3) As part of any sentence for any first conviction of Section 41-6a-502 not described in Subsection (1):
 - (a) the court shall:

- (i)
 - (A) impose a jail sentence of not less than two days; or
 - (B) require the individual to work in a compensatory-service work program for not less than 48 hours;
- (ii) order the individual to participate in a screening;
- (iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (3)(a)(ii);
- (iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (3)(b);
- (v) impose a fine of not less than \$700;
- (vi)
 - (A) order the individual 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(6)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; or
- (vii)
 - (A) order the individual 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(6)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; and
- (b) the court may:
 - (i) order the individual to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate;
 - (ii) order probation for the individual in accordance with Section 41-6a-507;
 - (iii) order the individual to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years old or older; or
 - (iv) order a combination of Subsections (3)(b)(i) through (iii).
- (4)
 - (a) If an individual described in Subsection (3) is participating in a 24-7 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed under Subsection (3)(a).
 - (b) If an individual described in Subsection (4)(a) fails to successfully complete all of the requirements of the 24-7 sobriety program, the court shall impose the suspended jail sentence described in Subsection (4)(a).
- (5) If an individual has a prior conviction as defined in Section 41-6a-501 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 amounts to extreme DUI:
 - (a) the court shall:
 - (i)
 - (A) impose a jail sentence of not less than 20 days;
 - (B) impose a jail sentence of not less than 10 days in addition to home confinement of not fewer than 60 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506; or
 - (C) impose a jail sentence of not less than 10 days in addition to ordering the individual to obtain substance abuse treatment, if the court finds that substance abuse treatment is more likely to reduce recidivism and is in the interests of public safety;
 - (ii) order the individual to participate in a screening;

- (iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (5)(a)(ii);
- (iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (5)(b);
- (v) impose a fine of not less than \$800;
- (vi) order probation for the individual in accordance with Section 41-6a-507;
- (vii) order the installation of an ignition interlock system as described in Section 41-6a-518;
- (viii)
 - (A) order the individual 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(6)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; or
- (ix)
 - (A) order the individual 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(6)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; and
- (b) the court may:
 - (i) order the individual to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate;
 - (ii) order the individual to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years old or older; or
 - (iii) order a combination of Subsections (5)(b)(i) and (ii).
- (6)
 - (a) If an individual described in Subsection (5) is participating in a 24-7 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed under Subsection (5)(a) after the individual has served a minimum of:
 - (i) five days of the jail sentence for a second offense; or
 - (ii) 10 days of the jail sentence for a third or subsequent offense.
 - (b) If an individual described in Subsection (6)(a) fails to successfully complete all of the requirements of the 24-7 sobriety program, the court shall impose the suspended jail sentence described in Subsection (6)(a).
- (7) If an individual has a prior conviction as defined in Section 41-6a-501 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 and that does not qualify under Subsection (5):
 - (a) the court shall:
 - (i)
 - (A) impose a jail sentence of not less than 10 days; or
 - (B) impose a jail sentence of not less than 5 days in addition to home confinement of not fewer than 30 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506;
 - (ii) order the individual to participate in a screening;
 - (iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (7)(a)(ii);
 - (iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (7)(b);
 - (v) impose a fine of not less than \$800;

- (vi) order probation for the individual in accordance with Section 41-6a-507;
- (vii)
 - (A) order the individual 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(6)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; or
- (viii)
 - (A) order the individual 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(6)(a), other than the individual sentenced, order the individual sentenced to reimburse the party; and
- (b) the court may:
 - (i) order the individual to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate;
 - (ii) order the individual to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years old or older; or
 - (iii) order a combination of Subsections (7)(b)(i) and (ii).
- (8)
 - (a) If an individual described in Subsection (7) is participating in a 24-7 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed under Subsection (7)(a) after the individual has served a minimum of:
 - (i) five days of the jail sentence for a second offense; or
 - (ii) 10 days of the jail sentence for a third or subsequent offense.
 - (b) If an individual described in Subsection (8)(a) fails to successfully complete all of the requirements of the 24-7 sobriety program, the court shall impose the suspended jail sentence described in Subsection (8)(a).
- (9) Under Subsection 41-6a-502(2)(c), if the court suspends the execution of a prison sentence and places the defendant on probation for a conviction of extreme DUI, the court shall impose:
 - (a) a fine of not less than \$1,500;
 - (b) a jail sentence of not less than 120 days;
 - (c) home confinement of not fewer than 120 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506; and
 - (d) supervised probation.
- (10)
 - (a) For Subsection (9) or Subsection 41-6a-502(2)(c)(i), the court:
 - (i) shall impose an order requiring the individual to obtain a screening and assessment for alcohol and substance abuse, and treatment as appropriate; and
 - (ii) may impose an order requiring the individual to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years old or older.
 - (b) If an individual described in Subsection (10)(a)(ii) fails to successfully complete all of the requirements of the 24-7 sobriety program, the court shall impose the suspended prison sentence described in Subsection (9).
- (11) Under Subsection 41-6a-502(2)(c), if the court suspends the execution of a prison sentence and places the defendant on probation with a sentence not described in Subsection (9), the court shall impose:
 - (a) a fine of not less than \$1,500;

- (b) a jail sentence of not less than 60 days;
 - (c) home confinement of not fewer than 60 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506; and
 - (d) supervised probation.
- (12)
- (a)
 - (i) Except as described in Subsection (12)(a)(ii), a court may not suspend the requirements of this section.
 - (ii) A court may suspend requirements as described in Subsection (2), (4), (6), or (8).
 - (b) A court, with stipulation of both parties and approval from the judge, may convert a jail sentence required in this section to electronic home confinement.
 - (c) A court may order a jail sentence imposed as a condition of misdemeanor probation under this section to be served in multiple two-day increments at weekly intervals if the court determines that separate jail increments are necessary to ensure the defendant can serve the statutorily required jail term and maintain employment.
- (13) If an individual is convicted of a violation of Section 41-6a-502 and there is admissible evidence that the individual had a blood or breath 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), (3)(b), (5)(b), or (7)(b); and
 - (b) one or more of the following:
 - (i) the installation of an ignition interlock system as a condition of probation for the individual in accordance with Section 41-6a-518;
 - (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring device or remote alcohol monitor as a condition of probation for the individual; or
 - (iii) the imposition of home confinement through the use of electronic monitoring in accordance with Section 41-6a-506.