

DUI PROBATION OR PAROLE

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine Bryson

AN ACT RELATING TO MOTOR VEHICLES; CLARIFYING THE DURATION OF PROBATION OR PAROLE FOR CERTAIN DUI OFFENSES; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

41-6-44, as last amended by Chapter 68, Laws of Utah 1997

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) "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 under 10 U.S.C. 815;

(b) a violation of this section includes a violation under a local ordinance similar to this

1 section adopted in compliance with Section 41-6-43; and

2 (c) the standard of negligence is that of simple negligence, the failure to exercise that
3 degree of care that an ordinarily reasonable and prudent person exercises under like or similar
4 circumstances.

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

7 (i) has a blood or breath alcohol concentration of .08 grams or greater as shown by a
8 chemical test given within two hours after the alleged operation or physical control; or

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

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

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

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

18 (a) class B misdemeanor; or

19 (b) class A misdemeanor if the person:

20 (i) has also inflicted bodily injury upon another as a proximate result of having operated
21 the vehicle in a negligent manner; or

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

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

25 (b) The court may, as an alternative to all or part of a jail sentence, require the person to
26 work in a community-service work program for not less than 24 hours.

27 (c) In addition to the jail sentence or community-service work program, the court shall:

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

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

31 (d) For a violation committed after July 1, 1993, the court may order the person to obtain

1 treatment at an alcohol or drug dependency rehabilitation facility if the licensed alcohol or drug
2 dependency rehabilitation facility determines that the person has a problem condition involving
3 alcohol or drugs.

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

7 (b) The court may, as an alternative to all or part of a jail sentence, require the person to
8 work in a community-service work program for not less than 80 hours.

9 (c) In addition to the jail sentence or community-service work program, the court shall:

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

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

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

15 (6) (a) A third or subsequent conviction for a violation committed within six years of two
16 or more prior convictions under this section is a:

17 (i) class A misdemeanor except as provided in Subsection (6)(a)(ii); and

18 (ii) third degree felony if at least:

19 (A) three prior convictions are for violations committed after April 23, 1990; or

20 (B) two prior convictions are for violations committed after July 1, 1996.

21 (b) (i) Under Subsection (6)(a)(i) the court shall as part of any sentence impose a fine of
22 not less than \$2,000 and impose a mandatory jail sentence of not less than 720 hours.

23 (ii) The court may, as an alternative to all or part of a jail sentence, require the person to
24 work in a community-service work program for not less than 240 hours, but only if the court enters
25 in writing on the record the reason it finds the defendant should not serve the jail sentence.

26 Enrollment in and completion of an alcohol or drug dependency rehabilitation program approved
27 by the court may be a sentencing alternative to incarceration or community service if the program
28 provides intensive care or inpatient treatment and long-term closely supervised follow-through
29 after the treatment.

30 (iii) In addition to the jail sentence or community-service work program, the court shall
31 order the person to obtain treatment at an alcohol or drug dependency rehabilitation facility.

1 (c) Under Subsection (6)(a)(ii) if the court suspends the execution of a prison sentence and
2 places the defendant on probation the court shall impose:

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

4 (ii) a mandatory jail sentence of not less than 1,000 hours; and

5 (iii) an order requiring the person to obtain treatment at an alcohol or drug dependency
6 rehabilitation program providing intensive care or inpatient treatment and long-term closely
7 supervised follow-through after treatment.

8 (7) (a) The mandatory portion of any sentence required under this section may not be
9 suspended and the convicted person is not eligible for parole or probation until any sentence
10 imposed under this section has been served. Probation or parole resulting from a conviction for
11 a violation under this section may not be terminated prior to the expiration of the maximum
12 sentence.

13 (b) The department may not reinstate any license suspended or revoked as a result of the
14 conviction under this section, until the convicted person has furnished evidence satisfactory to the
15 department that:

16 (i) all required alcohol or drug dependency assessment, education, treatment, and
17 rehabilitation ordered for a violation committed after July 1, 1993, have been completed;

18 (ii) all fines and fees including fees for restitution and rehabilitation costs assessed against
19 the person have been paid, if the conviction is a second or subsequent conviction for a violation
20 committed within six years of a prior violation; and

21 (iii) the person does not use drugs in any abusive or illegal manner as certified by a
22 licensed alcohol or drug dependency rehabilitation facility, if the conviction is for a third or
23 subsequent conviction for a violation committed within six years of two prior violations committed
24 after July 1, 1993.

25 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court
26 to order a convicted person to: participate in an assessment and educational series at a licensed
27 alcohol or drug dependency rehabilitation facility; obtain, in the discretion of the court, treatment
28 at an alcohol or drug dependency rehabilitation facility; obtain, mandatorily, treatment at an
29 alcohol or drug dependency rehabilitation facility; or do a combination of those things, apply to
30 a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

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

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

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

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

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

17 (b) The court shall advise the defendant before accepting the plea offered under this
18 subsection of the consequences of a violation of Section 41-6-44.6 or of 41-6-45.

19 (c) The court shall notify the department of each conviction of Section 41-6-44.6 or
20 41-6-45 entered under this subsection.

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

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

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

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

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

1 (12).

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

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

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

12 Section 2. **Effective date.**

13 This act takes effect on July 1, 1998.

Legislative Review Note
as of 1-12-98 4:20 PM

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

Office of Legislative Research and General Counsel