

1 **PENALTIES FOR DRIVING UNDER THE**
2 **INFLUENCE**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Nora B. Stephens**

6 AN ACT RELATING TO MOTOR VEHICLES; AUTHORIZING HOME CONFINEMENT
7 THROUGH THE USE OF ELECTRONIC MONITORING FOR CERTAIN DUI
8 OFFENDERS; PROVIDING PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

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

10 AMENDS:

11 **41-6-44**, as last amended by Chapters 13, 94 and 168, Laws of Utah 1998

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

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

14 **41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe**
15 **blood alcohol concentration -- Measurement of blood or breath alcohol -- Criminal**
16 **punishment -- Arrest without warrant -- Penalties -- Suspension or revocation of license.**

17 (1) As used in this section:

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

19 (i) this section;

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

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

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

24 (v) statutes or ordinances in effect in any other state, the United States, or any district,
25 possession, or territory of the United States which would constitute a violation of this section or
26 alcohol-related reckless driving if committed in this state, including punishments administered
27 under 10 U.S.C. Sec. 815;

28 (b) "serious bodily injury" means bodily injury that creates or causes serious permanent
29 disfigurement, protracted loss or impairment of the function of any bodily member or organ, or
30 creates a substantial risk of death;

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

33 (d) the standard of negligence is that of simple negligence, the failure to exercise that
34 degree of care that an ordinarily reasonable and prudent person exercises under like or similar
35 circumstances.

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

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

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

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

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

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

49 (i) class B misdemeanor; or

50 (ii) class A misdemeanor if the person:

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

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

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

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

59 (b) The court may, as an alternative to all or part of a jail sentence, require the person to:
60 (i) work in a compensatory-service work program for not less than 24 hours; or
61 (ii) spend not less than 15 days in home confinement through the use of electronic
62 monitoring in accordance with Subsection (13).

63 (c) In addition to the jail sentence [or],² compensatory-service work program, or home
64 confinement, the court shall:

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

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

68 (d) For a violation committed after July 1, 1993, the court may order the person to obtain
69 treatment at an alcohol or drug dependency rehabilitation facility if the licensed alcohol or drug
70 dependency rehabilitation facility determines that the person has a problem condition involving
71 alcohol or drugs.

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

75 (b) The court may, as an alternative to all or part of a jail sentence, require the person to:
76 (i) work in a compensatory-service work program for not less than 80 hours; or
77 (ii) spend not less than 30 days in home confinement through the use of electronic
78 monitoring in accordance with Subsection (13).

79 (c) In addition to the jail sentence [or],² compensatory-service work program, or home
80 confinement, the court shall:

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

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

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

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

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

89 (ii) third degree felony if at least:

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

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

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

94 (ii) (A) The court may, as an alternative to all or part of a jail sentence, require the person
95 to:

96 (I) work in a compensatory-service work program for not less than 240 hours, but only if
97 the court enters in writing on the record the reason it finds the defendant should not serve the jail
98 sentence; or

99 (II) spend not less than 30 days in home confinement through the use of electronic
100 monitoring in accordance with Subsection (13).

101 (B) Enrollment in and completion of an alcohol or drug dependency rehabilitation program
102 approved by the court may be a sentencing alternative to incarceration or compensatory service if
103 the program provides intensive care or inpatient treatment and long-term closely supervised
104 follow-through after the treatment.

105 (iii) In addition to the jail sentence [or], compensatory-service work program, or home
106 confinement, the court shall order the person to obtain treatment at an alcohol or drug dependency
107 rehabilitation facility.

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

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

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

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

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

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

121 department that:

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

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

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

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

137 (ii) The court shall render the same order regarding education or treatment at an alcohol
138 or drug dependency rehabilitation facility, or both, in connection with a first, second, or subsequent
139 conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in
140 connection with applying respectively, the first, second, or subsequent conviction requirements of
141 Subsections (4), (5), and (6).

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

145 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a
146 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section
147 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section,
148 the prosecution shall state for the record a factual basis for the plea, including whether or not there
149 had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection
150 with the violation.

151 (ii) The statement is an offer of proof of the facts that shows whether there was

152 consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the
153 violation.

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

156 (c) The court shall notify the department of each conviction of Section 41-6-44.6 or
157 41-6-45 entered under this subsection.

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

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

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

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

168 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
169 (12).

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

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

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

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

- 183 (b) The electronic monitoring device shall be used under conditions which require:
184 (i) the person to wear an electronic monitoring device at all times;
185 (ii) that a device be placed in the home of the person, so that the person's compliance with
186 the court's order may be monitored; and
187 (iii) the person to pay the costs of the electronic monitoring.
188 (c) The court shall order the appropriate entity described in Subsection (e) to place an
189 electronic monitoring device on the person and install electronic monitoring equipment in the
190 residence of the person.
191 (d) The court may:
192 (i) require the person's electronic home monitoring device to include an alcohol detection
193 breathalyzer;
194 (ii) restrict the amount of alcohol the person may consume during the time the person is
195 subject to home confinement;
196 (iii) set specific time and location conditions that allow the person to attend school
197 educational classes, or employment and to travel directly between those activities and the person's
198 home; and
199 (iv) waive all or part of the costs associated with home confinement if the person is
200 determined to be indigent by the court.
201 (e) The electronic monitoring described in this section may either be administered directly
202 by the appropriate corrections agency, probation monitoring agency, or by contract with a private
203 provider.
204 (f) The electronic monitoring provider shall cover the costs of waivers by the court under
205 Subsection (13)(c)(iv).
206 Section 2. **Effective date.**
207 This act takes effect on July 1, 1999.

Legislative Review Note
as of 12-8-98 11:13 AM

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

Office of Legislative Research and General Counsel