

**REVISIONS TO DRIVING UNDER THE
INFLUENCE**

2001 GENERAL SESSION
STATE OF UTAH

Sponsor: A. Lamont Tyler

This act modifies the Motor Vehicles Code by expanding the felony driving while intoxicated violations. This act expands the time frame for counting prior DUI convictions. This act restricts public access to Driver License Division records to a six-year period.

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

AMENDS:

41-6-44, as last amended by Chapters 333 and 334, Laws of Utah 2000

41-6-44.7, as last amended by Chapter 334, Laws of Utah 2000

53-3-109, as enacted by Chapter 255, Laws of Utah 2000

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) "educational series" means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(b) "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. Sec. 815;

(c) "screening and assessment" means a substance abuse addiction and dependency screening and assessment obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

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

(e) "substance abuse treatment" means treatment obtained at a substance abuse program that is approved by the Board of Substance Abuse in accordance with Section 62A-8-107;

(f) "substance abuse treatment program" means a state licensed substance abuse program;

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

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

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

(i) has sufficient alcohol in his body that a chemical test given within two hours of the alleged operation or physical control shows that the person has a blood or breath alcohol concentration of .08 grams or greater; or

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

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

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

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

- (i) class B misdemeanor; or
- (ii) class A misdemeanor if the person:

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

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

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

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

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

(i) work in a compensatory-service work program for not less than 24 hours; or

(ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

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

(i) order the person to participate in a screening and assessment;

(ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (4)(d); and

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

(d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.

(e) The court may order probation for the person in accordance with Subsection (14).

(5) (a) If a person is convicted under Subsection (2) within [six] ten years of a prior conviction under this section, the court shall as part of any sentence impose a mandatory jail sentence

of not less than 240 consecutive hours.

- (b) The court may, as an alternative to all or part of a jail sentence, require the person to:
- (i) work in a compensatory-service work program for not less than 240 hours; or
 - (ii) participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).
- (c) In addition to the jail sentence, compensatory-service work program, or home confinement, the court shall:
- (i) order the person to participate in a screening and assessment;
 - (ii) order the person to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (5)(d); and
 - (iii) impose a fine of not less than \$800.
- (d) The court may order the person to obtain substance abuse treatment if the substance abuse treatment program determines that substance abuse treatment is appropriate.
- (e) The court may order probation for the person in accordance with Subsection (14).
- (6) (a) A [third or subsequent] conviction for a violation of Subsection (2) is a third degree felony if it is committed:
- (i) within [six] ten years of two or more prior convictions under this section [~~is a third degree felony.~~]; or
 - (ii) at any time after a conviction of:
 - (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001; or
 - (B) a felony violation under this section that is committed after July 1, 2001.
- (b) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison sentence and places the defendant on probation the court shall impose:
- (i) a fine of not less than \$1,500; and
 - (ii) a mandatory jail sentence of not less than 1,500 hours.
- (c) For Subsection (6)(a) or (b), the court shall impose an order requiring the person to obtain a screening and assessment and substance abuse treatment at a substance abuse treatment program providing intensive care or inpatient treatment and long-term closely supervised follow-through after treatment for not less than 240 hours.

(d) In addition to the penalties required under Subsection (6)(b), the court may require the person to participate in home confinement through the use of electronic monitoring in accordance with Subsection (13).

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

(8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court to order a convicted person to: participate in a screening and assessment; and an educational series; obtain, in the discretion of the court, substance abuse treatment; obtain, mandatorily, substance abuse treatment; or do a combination of those things, apply to a conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).

(ii) The court shall render the same order regarding screening and assessment, an educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections (4), (5), and (6).

(b) If a person fails to complete all court ordered screening and assessment, educational series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution and treatment costs, the court shall notify the Driver License Division of a failure to comply. Upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

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

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

(b) The court shall advise the defendant before accepting the plea offered under this Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section 41-6-45.

(c) The court shall notify the Driver License Division of each conviction of Section 41-6-44.6 or 41-6-45 entered under this Subsection (9).

(10) 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 his presence, and if the officer has probable cause to believe that the violation was committed by the person.

(11) (a) The Driver License Division shall:

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

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

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

(b) 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.

(12) (a) 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 Subsection (2) to be suspended or revoked for an additional period of 90 days, 180 days, or one year to remove from the highways those persons who have shown they are safety hazards.

(b) If the court suspends or revokes the person's license under this Subsection (12)(b), 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.

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

(b) The electronic monitoring device shall be used under conditions which require:

(i) the person to wear an electronic monitoring device at all times;

(ii) that a device be placed in the home or other specified location of the person, so that the person's compliance with the court's order may be monitored; and

(iii) the person to pay the costs of the electronic monitoring.

(c) The court shall order the appropriate entity described in Subsection (13)(e) to place an electronic monitoring device on the person and install electronic monitoring equipment in the residence of the person or other specified location.

(d) The court may:

(i) require the person's electronic home monitoring device to include a substance abuse testing instrument;

(ii) restrict the amount of alcohol the person may consume during the time the person is subject to home confinement;

(iii) set specific time and location conditions that allow the person to attend school educational classes, or employment and to travel directly between those activities and the person's home; and

(iv) waive all or part of the costs associated with home confinement if the person is determined to be indigent by the court.

(e) The electronic monitoring described in this section may either be administered directly by the appropriate corrections agency, probation monitoring agency, or by contract with a private provider.

(f) The electronic monitoring provider shall cover the costs of waivers by the court under Subsection (13)(c)(iv).

(14) (a) If supervised probation is ordered under Subsection (4)(e) or (5)(e):

(i) the court shall specify the period of the probation;

- (ii) the person shall pay all of the costs of the probation; and
 - (iii) the court may order any other conditions of the probation.
- (b) The court shall provide the probation described in this section by contract with a probation monitoring agency or a private probation provider.
- (c) The probation provider described in Subsection (14)(b) shall monitor the person's compliance with all conditions of the person's sentence, conditions of probation, and court orders received under this article and shall notify the court of any failure to comply with or complete that sentence or those conditions or orders.
- (d) (i) The court may waive all or part of the costs associated with probation if the person is determined to be indigent by the court.
- (ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers by the court under Subsection (14)(d)(i).
- (15) If a person is convicted of a violation of Subsection (2) and there is admissible evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order:
- (a) treatment as described under Subsection (4)(d), (5)(d), or (6)(b)(iii), then the court shall enter the reasons on the record; and
 - (b) the following penalties, the court shall enter the reasons on the record:
 - (i) the installation of an ignition interlock system as a condition of probation for the person in accordance with Section 41-6-44.7; or
 - (ii) the imposition of home confinement through the use of electronic monitoring in accordance with Subsection (13).

Section 2. Section **41-6-44.7** is amended to read:

- 41-6-44.7. Ignition interlock devices -- Use -- Probationer to pay cost -- Impecuniosity -- Fee.**
- (1) As used in this section:
 - (a) "Commissioner" means the commissioner of the Department of Public Safety.
 - (b) "Ignition interlock system" or "system" means a constant monitoring device or any similar device certified by the commissioner that prevents a motor vehicle from being started without

first determining the driver's breath alcohol concentration.

(c) "Probation provider" means the supervisor and monitor of the ignition interlock system required as a condition of probation or as otherwise ordered by the court who contracts with the court in accordance with Subsections 41-6-44(14)(b) and (c).

(2) (a) In addition to any other penalties imposed under Section 41-6-44, and in addition to any requirements imposed as a condition of probation, the court may require that any person who is convicted of violating Section 41-6-44 and who is granted probation may not operate a motor vehicle during the period of probation unless that motor vehicle is equipped with a functioning, certified ignition interlock system installed and calibrated so that the motor vehicle will not start if the operator's blood alcohol concentration exceeds a level ordered by the court.

(b) If a person convicted of violating Section 41-6-44 was under the age of 21 when the violation occurred, the court shall order the installation of the ignition interlock system as a condition of probation.

(c) (i) If a person is convicted of a violation of Section 41-6-44 within [six] ten years of a prior conviction of that section, the court shall order the installation of the ignition interlock system, at the person's expense, for all motor vehicles registered to that person and all motor vehicles operated by that person for three years from the date of conviction.

(ii) The division shall post the ignition interlock restriction on the electronic record available to law enforcement.

(3) Except as provided in Subsection (2)(c), if the court imposes the use of an ignition interlock system as a condition of probation, the court shall:

(a) stipulate on the record the requirement for and the period of the use of an ignition interlock system;

(b) order that an ignition interlock system be installed on each motor vehicle owned or operated by the probationer, at the probationer's expense;

(c) order the probationer to submit his driver license to the Driver License Division in accordance with Subsection (5);

(d) immediately notify the Driver License Division and the person's probation provider of

the order; and

(e) require the probationer to provide proof of compliance with the court's order to the probation provider within 30 days of the order.

(4) (a) The probationer shall provide timely proof of installation within 30 days of an order imposing the use of a system or show cause why the order was not complied with to the court or to the probationer's probation provider.

(b) The probation provider shall notify the court of failure to comply under Subsection (4)(a).

(c) For failure to comply under Subsection (4)(a) or upon receiving the notification under Subsection (4)(b), the court shall order the Driver License Division to suspend the probationer's driving privileges for the remaining period during which the compliance was imposed.

(d) Cause for failure to comply means any reason the court finds sufficiently justifiable to excuse the probationer's failure to comply with the court's order.

(5) (a) If use of an ignition interlock system is required under this section, the division may not issue, reinstate, or renew the driver license of that person unless that requirement is coded on the person's driver license.

(b) (i) If the division receives a notice that a person with a valid driver license that does not require a driver license withdrawal is required to use an ignition interlock system, the division shall notify the person that he has ten calendar days to apply to the division for an ignition interlock system requirement coded on the license.

(ii) The division shall suspend the driver license of the person after the ten-day period until the person applies to the division for an ignition interlock system requirement coded on the license.

(6) (a) Any probationer required to install an ignition interlock system shall have the system monitored by the manufacturer or dealer of the system for proper use and accuracy at least semiannually and more frequently as the court may order.

(b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the court or the person's probation provider.

(ii) The report shall be issued within 14 days following each monitoring.

- (7) (a) If an ignition interlock system is ordered installed, the probationer shall pay the reasonable costs of leasing or buying and installing and maintaining the system.
- (b) A probationer may not be excluded from this section for inability to pay the costs, unless:
- (i) the probationer files an affidavit of impecuniosity; and
 - (ii) the court enters a finding that the probationer is impecunious.
- (c) In lieu of waiver of the entire amount of the cost, the court may direct the probationer to make partial or installment payments of costs when appropriate.
- (d) Subject to appropriation, the department shall lease or purchase the ignition interlock system and reimburse each installer maintaining the system provided to probationers for whom payment of costs has been waived or deferred on the grounds of indigency.
- (8) (a) An additional fee of \$100 shall be paid to the court by each probationer ordered to purchase, install, use, and maintain an ignition interlock system under this section.
- (b) The fee shall be deposited with the department as a dedicated credit for the support costs incurred for indigent individuals under Subsection (7)(d).
- (c) Failure to pay the fees required under this section shall, unless excused, constitute sufficient basis for a finding by the court at a hearing that the probationer has failed to comply with the terms of probation.
- (9) (a) If a probationer is required in the course and scope of employment to operate a motor vehicle owned by the probationer's employer, the probationer may operate that motor vehicle in the course and scope of employment without installation of an ignition interlock system only if the employer has been notified that the employee is restricted and the employee has proof of the notification in his possession while operating the employer's motor vehicle.
- (b) (i) To the extent that an employer-owned motor vehicle is made available to a probationer subject to this section for personal use, no exemption under this section shall apply.
- (ii) A probationer intending to operate an employer-owned motor vehicle for personal use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock system shall notify the employer and obtain consent in writing from the employer to install a system in the employer-owned motor vehicle.

(c) A motor vehicle owned by a business entity that is all or partly owned or controlled by a probationer subject to this section is not a motor vehicle owned by the employer and does not qualify for an exemption under this Subsection (9).

(10) Upon conviction for violation of this section, the court shall notify the Driver License Division to immediately suspend the probationer's license to operate a motor vehicle for the remainder of the period of probation.

(11) (a) It is a class B misdemeanor for a person to:

(i) circumvent or tamper with the operation of an ignition interlock system;

(ii) knowingly furnish a motor vehicle without an ignition interlock system to someone who is not authorized to drive a motor vehicle unless the motor vehicle is equipped with an ignition interlock system that is in working order;

(iii) rent, lease, or borrow a motor vehicle without an ignition interlock system if a driving restriction is imposed under this section;

(iv) request another person to blow into an ignition interlock system, if the person is required to have a system and the person requests or solicits another to blow into the system to start the motor vehicle in order to circumvent the system;

(v) blow into an ignition interlock system or start a motor vehicle equipped with an ignition interlock system for the purpose of providing an operable motor vehicle to another person required to have a system; and

(vi) advertise for sale, offer for sale, sell, or lease an ignition interlock system unless the system has been certified by the commissioner and the manufacturer of the system has affixed a warning label, as approved by the commissioner on the system, stating that the tampering, circumventing, or other misuse of the system is a class B misdemeanor.

(b) This Subsection (11) does not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock system is done for the purpose of safety or mechanical repair of the system or the motor vehicle and the person subject to the court order does not drive the motor vehicle.

(12) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

commissioner shall make rules setting standards for the certification of ignition interlock systems.

(b) The standards shall require that the system:

(i) not impede the safe operation of the motor vehicle;

(ii) have features that make circumventing difficult and that do not interfere with the normal use of the motor vehicle;

(iii) require a deep lung breath sample as a measure of breath alcohol concentration;

(iv) prevent the motor vehicle from being started if the driver's breath alcohol concentration exceeds an ordered level;

(v) work accurately and reliably in an unsupervised environment;

(vi) resist tampering and give evidence if tampering is attempted;

(vii) operate reliably over the range of motor vehicle environments; and

(viii) be manufactured by a party who will provide liability insurance.

(c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or independent laboratory tests relied upon in certification of ignition interlock systems by other states.

(d) A list of certified systems shall be published by the commissioner and the cost of certification shall be borne by the manufacturers or dealers of ignition interlock systems seeking to sell, offer for sale, or lease the systems.

(e) In accordance with Section 63-38-3.2, the commissioner may establish an annual dollar assessment against the manufacturers of ignition interlock systems distributed in the state for the costs incurred in certifying. The assessment shall be apportioned among the manufacturers on a fair and reasonable basis.

(13) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the state or its employees in connection with the installation, use, operation, maintenance, or supervision of an interlock ignition system as required under this section.

Section 3. Section **53-3-109** is amended to read:

53-3-109. Records -- Access -- Fees -- Rulemaking.

(1) (a) Except as provided in this section, all records of the division shall be classified and disclosed in accordance with Title 63, Chapter 2, Government Records Access and Management Act.

- (b) The division may only disclose personal identifying information:
 - (i) when the division determines it is in the interest of the public safety to disclose the information; and
 - (ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.
 - (2) A person who receives personal identifying information shall be advised by the division that the person may not:
 - (a) disclose the personal identifying information from that record to any other person; or
 - (b) use the personal identifying information from that record for advertising or solicitation purposes.
 - (3) The division may:
 - (a) collect fees in accordance with Section 53-3-105 for searching and compiling its files or furnishing a report on the driving record of a person; and
 - (b) prepare under the seal of the division and deliver upon request, a certified copy of any record of the division, and charge a fee under Section 63-38-3.2 for each document authenticated.
 - (4) Each certified copy of a driving record furnished in accordance with this section is admissible in any court proceeding in the same manner as the original.
- (5) (a) A driving record furnished under this section may only report on the driving record of a person for a period of six years.
- (b) Subsection (5)(a) does not apply to court or law enforcement reports and to reports of commercial driver license violations.
- [~~(5)~~] (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules to designate what information shall be included in a report on the driving record of a person.