

**MULTIPLE DRIVING UNDER THE
INFLUENCE OFFENSES**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: A. Lamont Tyler

This act modifies the Motor Vehicle Code by amending Driving Under the Influence (DUI) prior conviction definition to include driving with drugs or a combination of both in the body. The act includes original DUI related offenses that are reduced by the court as prior convictions in subsequent DUI cases and in driver license suspensions.

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

AMENDS:

41-6-44, as last amended by Chapters 64, 289, 309 and 355, Laws of Utah 2001

41-6-44.6, as last amended by Chapter 355, Laws of Utah 2001

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 a combination of both 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"]~~ (a) "conviction" means any conviction for a violation of:

(i) this section;

(ii) ~~[alcohol-related]~~ alcohol, any drug, or a combination of both-related reckless driving under Subsections (9) and (10);



28 (iii) Section 41-6-44.6, driving with any measurable controlled substance that is taken
29 illegally in the body;

30 [~~(iii)~~] (iv) local ordinances similar to this section or [~~alcohol-related~~] alcohol, any drug,
31 or a combination of both-related reckless driving adopted in compliance with Section 41-6-43;

32 [~~(iv)~~] (v) automobile homicide under Section 76-5-207; or

33 (vi) a violation described in Subsections (1)(a)(i) through (v), which judgment of
34 conviction is reduced under Section 76-3-402; or

35 [~~(v)~~] (vii) statutes or ordinances in effect in any other state, the United States, or any
36 district, possession, or territory of the United States which would constitute a violation of this
37 section or [~~alcohol-related~~] alcohol, any drug, or a combination of both-related reckless driving
38 if committed in this state, including punishments administered under 10 U.S.C. Sec. 815;

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

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

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

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

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

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

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

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

57 (i) has sufficient alcohol in his body that a chemical test given within two hours of the
58 alleged operation or physical control shows that the person has a blood or breath alcohol

59 concentration of .08 grams or greater; or

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

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

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

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

69 (i) class B misdemeanor; or

70 (ii) class A misdemeanor if the person:

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

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

74 (C) was 21 years of age or older and had a passenger under 18 years of age in the vehicle
75 at the time of the offense.

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

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

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

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

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

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

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

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

- 90 (iii) impose a fine of not less than \$700.
- 91 (d) The court may order the person to obtain substance abuse treatment if the substance
- 92 abuse treatment program determines that substance abuse treatment is appropriate.
- 93 (e)(i) Except as provided in Subsection (4)(e)(ii), the court may order probation for the
- 94 person in accordance with Subsection (14).
- 95 (ii) If there is admissible evidence that the person had a blood alcohol level of .16 or
- 96 higher, the court shall order probation for the person in accordance with Subsection (14).
- 97 (5) (a) If a person is convicted under Subsection (2) within ten years of a prior conviction
- 98 under this section, the court shall as part of any sentence impose a mandatory jail sentence of not
- 99 less than 240 consecutive hours.
- 100 (b) The court may, as an alternative to all or part of a jail sentence, require the person to:
- 101 (i) work in a compensatory-service work program for not less than 240 hours; or
- 102 (ii) participate in home confinement through the use of electronic monitoring in
- 103 accordance with Subsection (13).
- 104 (c) In addition to the jail sentence, compensatory-service work program, or home
- 105 confinement, the court shall:
- 106 (i) order the person to participate in a screening and assessment;
- 107 (ii) order the person to participate in an educational series if the court does not order
- 108 substance abuse treatment as described under Subsection (5)(d); and
- 109 (iii) impose a fine of not less than \$800.
- 110 (d) The court may order the person to obtain substance abuse treatment if the substance
- 111 abuse treatment program determines that substance abuse treatment is appropriate.
- 112 (e) The court shall order probation for the person in accordance with Subsection (14).
- 113 (6) (a) A conviction for a violation of Subsection (2) is a third degree felony if it is
- 114 ~~committed~~:
- 115 (i) a third or subsequent conviction under this section within ten years of two or more prior
- 116 convictions ~~[under this section]~~; or
- 117 (ii) at any time after a conviction of:
- 118 (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001; or
- 119 (B) a felony violation under this section that is committed after July 1, 2001.
- 120 (b) Any conviction described in this Subsection (6) which judgment of conviction is

121 reduced under Section 76-3-402 is a conviction for purposes of this section.

122 [~~(b)~~] (c) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison
123 sentence and places the defendant on probation the court shall impose:

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

125 (ii) a mandatory jail sentence of not less than 1,500 hours.

126 [~~(c)~~] (d) For Subsection (6)(a) or [~~(b)~~] (c), the court shall impose an order requiring the
127 person to obtain a screening and assessment and substance abuse treatment at a substance abuse
128 treatment program providing intensive care or inpatient treatment and long-term closely supervised
129 follow-through after treatment for not less than 240 hours.

130 [~~(d)~~] (e) In addition to the penalties required under Subsection (6)[~~(b)~~](c), the court may
131 require the person to participate in home confinement through the use of electronic monitoring in
132 accordance with Subsection (13).

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

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

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

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

152 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a
153 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section
154 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this section,
155 the prosecution shall state for the record a factual basis for the plea, including whether or not there
156 had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection
157 with the violation.

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

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

163 (c) The court shall notify the Driver License Division of each conviction of Section
164 41-6-44.6 or 41-6-45 entered under this Subsection (9).

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

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

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

172 (ii) revoke for one year the license of a person convicted of any subsequent offense under
173 Subsection (2) or if the person has a prior conviction as defined under Subsection (1) if the
174 violation is committed within a period of ten years from the date of the prior violation; and

175 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
176 (12).

177 (b) The Driver License Division shall subtract from any suspension or revocation period
178 the number of days for which a license was previously suspended under Section 53-3-223 or
179 53-3-231, if the previous suspension was based on the same occurrence upon which the record of
180 conviction is based.

181 (12) (a) In addition to any other penalties provided in this section, a court may order the
182 operator's license of a person who is convicted of a violation of Subsection (2) to be suspended

183 or revoked for an additional period of 90 days, 180 days, one year, or two years to remove from
184 the highways those persons who have shown they are safety hazards.

185 (b) If the court suspends or revokes the person's license under this Subsection (12)(b), the
186 court shall prepare and send to the Driver License Division an order to suspend or revoke that
187 person's driving privileges for a specified period of time.

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

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

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

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

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

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

199 (d) The court may:

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

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

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

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

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

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

214 (14) (a) If supervised probation is ordered under Section 41-6-44.6 or Subsection (4)(e)
215 or (5)(e):

- 216 (i) the court shall specify the period of the probation;
- 217 (ii) the person shall pay all of the costs of the probation; and
- 218 (iii) the court may order any other conditions of the probation.

219 (b) The court shall provide the probation described in this section by contract with a
220 probation monitoring agency or a private probation provider.

221 (c) The probation provider described in Subsection (14)(b) shall monitor the person's
222 compliance with all conditions of the person's sentence, conditions of probation, and court orders
223 received under this article and shall notify the court of any failure to comply with or complete that
224 sentence or those conditions or orders.

225 (d) (i) The court may waive all or part of the costs associated with probation if the person
226 is determined to be indigent by the court.

227 (ii) The probation provider described in Subsection (14)(b) shall cover the costs of waivers
228 by the court under Subsection (14)(d)(i).

229 (15) If a person is convicted of a violation of Subsection (2) and there is admissible
230 evidence that the person had a blood alcohol level of .16 or higher, then if the court does not order:

231 (a) treatment as described under Subsection (4)(d), (5)(d), or (6)~~(b)(iii)~~(d), then the court
232 shall enter the reasons on the record; and

233 (b) the following penalties, the court shall enter the reasons on the record:

234 (i) the installation of an ignition interlock system as a condition of probation for the person
235 in accordance with Section 41-6-44.7; or

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

238 Section 2. Section **41-6-44.6** is amended to read:

239 **41-6-44.6. Definitions -- Driving with any measurable controlled substance in the**
240 **body -- Penalties -- Arrest without warrant.**

241 (1) As used in this section:

- 242 (a) "Controlled substance" means any substance scheduled under Section 58-37-4.
- 243 (b) "Practitioner" has the same meaning as provided in Section 58-37-2.
- 244 (c) "Prescribe" has the same meaning as provided in Section 58-37-2.

245 (d) "Prescription" has the same meaning as provided in Section 58-37-2.

246 (2) In cases not amounting to a violation of Section 41-6-44, a person may not operate or
247 be in actual physical control of a motor vehicle within this state if the person has any measurable
248 controlled substance or metabolite of a controlled substance in the person's body.

249 (3) It is an affirmative defense to prosecution under this section that the controlled
250 substance was involuntarily ingested by the accused or prescribed by a practitioner for use by the
251 accused.

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

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

257 (6) The Driver License Division shall:

258 (a) suspend, for 90 days, the driver license of a person convicted under Subsection (2);

259 (b) revoke, for one year, the driver license of a person convicted of a second or subsequent
260 offense under Subsection (2) or if the person has a prior conviction as defined under Subsection
261 41-6-44(1), if the violation is committed within a period of [~~six~~] ten years after the date of the prior
262 violation; and

263 (c) subtract from any suspension or revocation period the number of days for which a
264 license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension
265 was based on the same occurrence upon which the record of conviction is based.

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

271 (8) The court shall order supervised probation in accordance with Subsection 41-6-44(14)
272 for a person convicted under Subsection (2).

Legislative Review Note
as of 10-25-01 11:42 AM

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

Office of Legislative Research and General Counsel

Committee Note

The Transportation Interim Committee recommended this bill.