

**AMENDMENTS TO DRIVING UNDER THE  
INFLUENCE**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Carlene M. Walker**

**This act modifies the Motor Vehicle Code. The act amends required compensatory-service hours of first DUI offenders. The act requires supervised probation for third degree felony DUI offenders who are placed on probation.**

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

*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



28 alcohol-related reckless driving if committed in this state, including punishments administered  
29 under 10 U.S.C. Sec. 815;

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

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

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

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

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

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

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

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

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

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

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

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

58 (i) class B misdemeanor; or

59 (ii) class A misdemeanor if the person:

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

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

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

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

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

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

71 (i) work in a compensatory-service work program for not less than [24] 48 hours; or

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

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

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

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

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

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

82 (e)(i) Except as provided in Subsection (4)(e)(ii), the court may order probation for the  
83 person in accordance with Subsection (14).

84 (ii) If there is admissible evidence that the person had a blood alcohol level of .16 or  
85 higher, the court shall order probation for the person in accordance with Subsection (14).

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

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

90 (i) work in a compensatory-service work program for not less than 240 hours; or  
91 (ii) participate in home confinement through the use of electronic monitoring in  
92 accordance with Subsection (13).

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

- 95 (i) order the person to participate in a screening and assessment;
- 96 (ii) order the person to participate in an educational series if the court does not order  
97 substance abuse treatment as described under Subsection (5)(d); and
- 98 (iii) impose a fine of not less than \$800.

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

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

102 (6) (a) A conviction for a violation of Subsection (2) is a third degree felony if it is  
103 committed:

- 104 (i) within ten years of two or more prior convictions under this section; or
- 105 (ii) at any time after a conviction of:
  - 106 (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001; or
  - 107 (B) a felony violation under this section that is committed after July 1, 2001.

108 (b) Under Subsection (3)(b) or (6)(a), 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; and
- 111 (ii) a mandatory jail sentence of not less than 1,500 hours.

112 (c) For Subsection (6)(a) or (b), the court shall impose an order requiring the person to  
113 obtain a screening and assessment and substance abuse treatment at a substance abuse treatment  
114 program providing intensive care or inpatient treatment and long-term closely supervised  
115 follow-through after treatment for not less than 240 hours.

116 (d) In addition to the penalties required under Subsection (6)(b), if the court [~~may require~~  
117 orders probation, the probation shall be supervised probation which may include requiring the  
118 person to participate in home confinement through the use of electronic monitoring in accordance  
119 with Subsection (13).

120 (7) The mandatory portion of any sentence required under this section may not be

121 suspended and the convicted person is not eligible for parole or probation until any sentence  
122 imposed under this section has been served. Probation or parole resulting from a conviction for  
123 a violation under this section may not be terminated.

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

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

134 (b) ~~[#]~~ The court shall notify the Driver License Division if a person fails to:

135 (i) complete all court ordered;

136 (A) screening and assessment~~[-];~~;

137 (B) educational series~~[-, and];~~;

138 (C) substance abuse treatment~~[-]; and~~

139 (D) hours of work in compensatory-service work program; or ~~[fails to]~~

140 (ii) pay all fines and fees, including fees for restitution and treatment costs~~[-, the court shall~~  
141 ~~notify the Driver License Division of a failure to comply]~~. Upon receiving the notification, the  
142 division shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2)  
143 and (3).

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

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

152 violation.

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

155 (c) The court shall notify the Driver License Division of each conviction of Section  
156 41-6-44.6 or 41-6-45 entered under this Subsection (9).

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

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

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

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

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

169 (b) The Driver License Division shall subtract from any suspension or revocation period  
170 the number of days for which a license was previously suspended under Section 53-3-223 or  
171 53-3-231, if the previous suspension was based on the same occurrence upon which the record of  
172 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, one year, or two years to remove from  
176 the highways those persons who have shown they are safety hazards.

177 (b) If the court suspends or revokes the person's license under this Subsection (12)(b), the  
178 court shall prepare and send to the Driver License Division an order to suspend or revoke that  
179 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 or other specified location of the person, so that  
186 the person's compliance with 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 (13)(e) to place an  
189 electronic monitoring device on the person and install electronic monitoring equipment in the  
190 residence of the person or other specified location.

191 (d) The court may:

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

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

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

209 (ii) the person shall pay all of the costs of the probation; and

210 (iii) the court may order any other conditions of the probation.

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

213 (c) The probation provider described in Subsection (14)(b) shall monitor the person's

214 compliance with all conditions of the person's sentence, conditions of probation, and court orders  
215 received under this article and shall notify the court of any failure to comply with or complete that  
216 sentence or those conditions or orders.

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

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

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

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

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

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

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

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**Legislative Review Note**  
**as of 10-25-01 11:44 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.