

DRIVING UNDER THE INFLUENCE

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Carlene M. Walker

LONG TITLE

General Description:

This bill modifies the Motor Vehicles Code and the Code of Criminal Procedure by amending driving under the influence related provisions.

Highlighted Provisions:

This bill:

- ▶ provides that an attorney with felony jurisdiction over the defendant must approve a plea of guilty or no contest to a possible felony DUI charge;
- ▶ amends the definition of conviction to:
 - include a violation by a person that knowingly and intentionally has any amount of a controlled substance in the person's body and operates a vehicle in a negligent manner causing serious bodily injury or death; and
 - provide that a plea which is held in abeyance is the equivalent of a conviction for purposes of enhancement of penalties for DUI offenses and for purposes of expungement;
- ▶ amends and redefines screening and assessment and provides that an assessment shall be ordered if found appropriate in a screening;
- ▶ provides that until June 30, 2006, a plea to a DUI charge may be held in abeyance only in certain circumstances;
- ▶ beginning on July 1, 2006, prohibits all pleas in abeyance for driving under the influence violations;
- ▶ provides sunset provisions;
- ▶ provides that a court may not expunge a person's record:

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- for a conviction of an automobile homicide or a felony DUI violation; or
- within ten years for a felony violation by a person that knowingly and intentionally has any amount of a controlled substance in the person's body and operates a vehicle in a negligent manner causing serious bodily injury or death or for the equivalent of a misdemeanor DUI conviction;

- ▶ requires the Commission on Criminal and Juvenile Justice to study pleas in abeyance for driving under the influence violations and report to the Transportation Interim Committee; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

17-43-201, as renumbered and amended by Chapter 22 and last amended by Chapter 262, Laws of Utah 2003

41-6-43.8, as enacted by Chapter 15, Laws of Utah 2003

41-6-44, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-105, as last amended by Chapter 22, Laws of Utah 2003

76-5-207, as last amended by Chapter 10, Laws of Utah 2003

77-2a-3, as last amended by Chapter 35, Laws of Utah 2002

77-18-11, as last amended by Chapter 227, Laws of Utah 1999

77-18-12, as last amended by Chapter 267, Laws of Utah 2002

ENACTS:

63-55b-177, Utah Code Annotated 1953

77-2a-3.1, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

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

Section 1. Section **17-43-201** is amended to read:

17-43-201. Local substance abuse authorities -- Responsibilities.

(1) (a) (i) In each county operating under a county executive-council form of government under Section 17-52-504, the county executive is the local substance abuse authority.

(ii) In each county operating under a council-manager form of government under Section 17-52-505, the county manager is the local substance abuse authority.

(iii) In each county other than a county described in Subsection (1)(a)(i) or (ii), the county legislative body is the local substance abuse authority.

(b) Within legislative appropriations and county matching funds required by this section, and under the policy direction of the board and the administrative direction of the division, each local substance abuse authority shall:

- (i) develop substance abuse prevention and treatment services plans; and
- (ii) provide substance abuse services to residents of the county.

(2) (a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, two or more counties may join to provide substance abuse prevention and treatment services.

(b) The legislative bodies of counties joining to provide services may establish acceptable ways of apportioning the cost of substance abuse services.

(c) Each agreement for joint substance abuse services shall:

(i) (A) designate the treasurer of one of the participating counties or another person as the treasurer for the combined substance abuse authorities and as the custodian of moneys available for the joint services; and

(B) provide that the designated treasurer, or other disbursing officer authorized by the treasurer, may make payments from the moneys for the joint services upon audit of the appropriate auditing officer or officers representing the participating counties;

(ii) provide for the appointment of an independent auditor or a county auditor of one of the participating counties as the designated auditing officer for the combined substance abuse authorities;

(iii) (A) provide for the appointment of the county or district attorney of one of the participating counties as the designated legal officer for the combined substance abuse authorities; and

(B) authorize the designated legal officer to request and receive the assistance of the county or district attorneys of the other participating counties in defending or prosecuting actions within their counties relating to the combined substance abuse authorities; and

(iv) provide for the adoption of management, clinical, financial, procurement, personnel, and administrative policies as already established by one of the participating counties or as approved by the legislative body of each participating county or interlocal board.

(d) An agreement for joint substance abuse services may provide for joint operation of services and facilities or for operation of services and facilities under contract by one participating local substance abuse authority for other participating local substance abuse authorities.

(3) (a) Each local substance abuse authority is accountable to the department, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for substance abuse services, regardless of whether the services are provided by a private contract provider.

(b) Each local substance abuse authority shall comply, and require compliance by its contract provider, with all directives issued by the department and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing substance abuse programs and services. The department and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local substance abuse authorities with regard to programs and services.

(4) Each local substance abuse authority shall:

(a) review and evaluate substance abuse prevention and treatment needs and services,

including substance abuse needs and services for individuals incarcerated in a county jail or other county correctional facility;

(b) annually prepare and submit to the division a plan for funding and service delivery that includes:

(i) provisions for services, either directly by the substance abuse authority or by contract, for adults, youth, and children, including those incarcerated in a county jail or other county correctional facility; and

(ii) primary prevention, targeted prevention, early intervention, and treatment services;

(c) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(d) appoint directly or by contract a full or part time director for substance abuse programs, and prescribe the director's duties;

(e) provide input and comment on new and revised policies established by the board;

(f) establish and require contract providers to establish administrative, clinical, procurement, personnel, financial, and management policies regarding substance abuse services and facilities, in accordance with the policies of the board, and state and federal law;

(g) establish mechanisms allowing for direct citizen input;

(h) annually contract with the division to provide substance abuse programs and services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;

(i) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

(j) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(k) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan;

(l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts

Act, and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities;

(m) for persons convicted of driving under the influence in violation of Subsection 41-6-44(2) or Section 41-6-44.6, conduct the following as defined in Section 41-6-44:

(i) a screening [~~and~~];

(ii) an assessment;

~~(iii)~~ (iii) an educational series; and

~~(iv)~~ (iv) substance abuse treatment; and

(n) utilize proceeds of the accounts described in Subsection 62A-15-503(1) to supplement the cost of providing the services described in Subsection (4)(m).

(5) Before disbursing any public funds, each local substance abuse authority shall require that each entity that receives any public funds from the local substance abuse authority agrees in writing that:

(a) the entity's financial records and other records relevant to the entity's performance of the services provided to the local substance abuse authority, except patient identifying information, shall be subject to examination by:

(i) the division;

(ii) the local substance abuse authority director;

(iii) (A) the county treasurer and county or district attorney; or

(B) if two or more counties jointly provide substance abuse services under an agreement under Subsection (2), the designated treasurer and the designated legal officer;

(iv) the county legislative body; and

(v) in a county with a county executive that is separate from the county legislative body, the county executive;

(b) the county auditor may examine and audit the entity's financial and other records relevant to the entity's performance of the services provided to the local substance abuse authority; and

(c) the entity will comply with the provisions of Subsection (3)(b).

(6) A local substance abuse authority may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for substance abuse services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(7) (a) As used in this section, "public funds" means the same as that term is defined in Section 17-43-203.

(b) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

Section 2. Section **41-6-43.8** is amended to read:

41-6-43.8. Acceptance of plea of guilty to DUI – Restrictions -- Verification of prior violations -- Prosecutor to examine defendant's record.

(1) A court may not accept a plea of guilty or no contest to a charge under Section 41-6-44 unless:

(a) the prosecutor agrees to the plea:

(i) in open court;

(ii) in writing; or

(iii) by another means of communication which the court finds adequate to record the prosecutor's agreement;

(b) the charge is filed by information as defined under Section 77-1-3; or

(c) the court receives verification from a law enforcement agency that the defendant's driver license record contains no record of a conviction, arrest, or charge for:

(i) more than one prior violation within the previous ten years of any offense which, if the defendant were convicted, would qualify as a "conviction" as defined under Subsection 41-6-44(1);

(ii) a felony violation of Section 41-6-44; or

(iii) automobile homicide under Section 76-5-207.

(2) A verification under Subsection (1)(c) may be made by:

(a) a written indication on the citation;

(b) a separate written document; or
(c) any other means which the court finds adequate to record the law enforcement agency's verification.

(3) (a) Prior to agreeing to a plea of guilty or no contest or to filing an information under Subsection (1), the prosecutor shall examine the criminal history or driver license record of the defendant.

(b) If the defendant's record contains a conviction or unresolved arrest or charge for an offense listed in Subsections (1)(c)(i) through (iii), a plea may only be accepted if:

(i) approved by:

(A) a district attorney;

(B) a deputy district attorney;

(C) a county attorney;

(D) a deputy county attorney;

(E) the attorney general; or

(F) an assistant attorney general; and

(ii) the attorney giving approval under Subsection (3)(b)(i) has felony jurisdiction over the case.

(4) A plea of guilty or no contest is not made invalid by the failure of the court, prosecutor, or law enforcement agency to comply with this section.

Section 3. 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) "assessment" means an in-depth clinical interview with a licensed mental health therapist:

(i) used to determine if a person is in need of:

(A) substance abuse treatment that is obtained at a substance abuse program;
(B) an educational series; or
(C) a combination of Subsections (1)(a)(i)(A) and (B); and
(ii) that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

~~[(a)]~~ (b) (i) "conviction" means any conviction for a violation of:

~~[(i)]~~ (A) this section;

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

~~[(iii)]~~ (C) Section 41-6-44.6, driving with any measurable controlled substance that is taken illegally in the body;

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

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

(F) Subsection 58-37-8(2)(g);

~~[(vi)]~~ (G) a violation described in Subsections (1)~~[(a)(i)]~~ (b)(i)(A) through ~~[(v)]~~ (F), which judgment of conviction is reduced under Section 76-3-402; or

~~[(vii)]~~ (H) 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, any drug, or a combination of both-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815;

(ii) A plea of guilty or no contest to a violation described in Subsections (1)(b)(i)(A) through (H) which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of:

(A) enhancement of penalties under:

(I) this Chapter 6, Article 5, Driving While Intoxicated and Reckless Driving; and

(II) automobile homicide under Section 76-5-207; and

(B) expungement under Section 77-18-12.

~~[(b)]~~ (c) "educational series" means an educational series obtained at a substance abuse program that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105;

~~[(c)]~~ (d) "screening ~~[and assessment]~~" means a ~~[substance abuse addiction and dependency screening and assessment obtained at a substance abuse program]~~ preliminary appraisal of a person:

(i) used to determine if the person is in need of:

(A) an assessment; or

(B) an educational series; and

(ii) that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105;

~~[(d)]~~ (e) "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)]~~ (f) "substance abuse treatment" means treatment obtained at a substance abuse program that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105;

~~[(f)]~~ (g) "substance abuse treatment program" means a state licensed substance abuse program;

~~[(g)]~~ (h) 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)]~~ (i) 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 subsequent chemical test shows that the person

has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(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; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation or actual physical control.

(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;

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

(C) was 21 years of age or older and had a passenger under 18 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 48 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 assessment, if it is found appropriate by a screening under Subsection (4)(c)(i);

~~[(ii)] (iii)~~ 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)] (iv)~~ 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) (i) Except as provided in Subsection (4)(e)(ii), the court may order probation for the person in accordance with Subsection (14).

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

(5) (a) If a person is convicted under Subsection (2) within 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 assessment, if it is found appropriate by a screening under Subsection (5)(c)(i);

~~[(ii)] (iii)~~ 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)]~~ (iv) 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 shall order probation for the person in accordance with Subsection (14).

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

(i) a third or subsequent conviction under this section within ten years of two or more prior convictions; 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) Any conviction described in this Subsection (6) which judgment of conviction is reduced under Section 76-3-402 is a conviction for purposes of this section.

(c) 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.

(d) For Subsection (6)(a) or (c), 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.

(e) In addition to the penalties required under Subsection (6)(c), if the court orders probation, the probation shall be supervised probation which may include requiring 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~~]; an assessment, if appropriate; 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) The court shall notify the Driver License Division if a person fails to:

(i) complete all court ordered:

(A) screening [~~and~~];

(B) assessment;

~~[(B)]~~ (C) educational series;

~~[(C)]~~ (D) substance abuse treatment; and

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

(ii) pay all fines and fees, including fees for restitution and treatment costs. 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) or if the person has a prior conviction as defined under Subsection (1) if the violation is committed within a period of 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, one year, or two years 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 Section 41-6-44.6 or 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]~~ the court shall order the following, or describe on record why the order or orders are not appropriate:

(a) treatment as described under Subsection (4)(d), (5)(d), or (6)(d)~~[- then the court shall enter the reasons on the record];~~ and

(b) one or both of 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 4. Section **62A-15-105** is amended to read:

62A-15-105. Authority and responsibilities of board.

The board is the policymaking body for the division and for programs funded with state and federal moneys under Sections 17-43-201, 17-43-301, 17-43-304, and 62A-15-110. The board shall:

(1) in establishing policy, seek input from local substance abuse authorities, local mental health authorities, consumers, providers, advocates, division staff, and other interested parties as determined by the board;

(2) establish, by rule, minimum standards for local substance abuse authorities and local mental health authorities;

(3) establish, by rule, procedures for developing its policies which ensure that local substance abuse authorities and local mental health authorities are given opportunity to comment and provide input on any new policy of the board or proposed changes in existing policy of the board;

(4) provide a mechanism for review of its existing policy, and for consideration of policy changes that are proposed by local substance abuse authorities or local mental health authorities;

(5) develop program policies, standards, rules, and fee schedules for the division; and

(6) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make rules approving the form and content of substance abuse treatment, educational series, [and] screening, and assessment that are described in Section 41-6-44.

Section 5. Section **63-55b-177** is enacted to read:

63-55b-177. Repeal dates, Title 77.

Section 77-2a-3.1 is repealed June 30, 2006.

Section 6. Section **76-5-207** is amended to read:

76-5-207. Automobile homicide.

(1) As used in this section, "motor vehicle" means any self-propelled vehicle and includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

(2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person

has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(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; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is subsequent to a conviction as defined in Subsection 41-6-44(1)[~~(a)~~].

(c) As used in this Subsection (2), "negligent" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

(3) (a) Criminal homicide is automobile homicide, a second degree felony, if the person operates a motor vehicle in a criminally negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(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; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) As used in this Subsection (3), "criminally negligent" means criminal negligence as defined by Subsection 76-2-103(4).

(4) The standards for chemical breath analysis as provided by Section 41-6-44.3 and the provisions for the admissibility of chemical test results as provided by Section 41-6-44.5 apply to determination and proof of blood alcohol content under this section.

(5) Calculations of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6-44(2).

(6) 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.

(7) Evidence of a defendant's blood or breath alcohol content or drug content is

admissible except when prohibited by Rules of Evidence or the constitution.

Section 7. Section **77-2a-3** is amended to read:

77-2a-3. Manner of entry of plea -- Powers of court.

(1) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with the provisions of Rule 11, Utah Rules of Criminal Procedure.

(2) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:

(a) reduce the degree of the offense and enter judgment of conviction and impose sentence for a lower degree of offense; or

(b) allow withdrawal of defendant's plea and order the dismissal of the case.

(3) Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement, the court shall reduce the degree of the offense, dismiss the case only as provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of the offense.

(4) The court may require the Department of Corrections to assist in the administration of the plea in abeyance agreement as if the defendant were on probation to the court under Section 77-18-1.

(5) The court may upon acceptance of a plea in abeyance agreement and pursuant to the terms of the agreement:

(a) order the defendant to pay a nonrefundable plea in abeyance fee, which shall be allocated in the same manner as if it had been paid as a fine and shall not exceed in amount the maximum fine which could have been imposed upon conviction and sentencing for the same offense;

(b) order the defendant to pay all or a portion of the costs of administration of the agreement;

(c) order the defendant to pay restitution to the victims of his actions as provided in Title 77, Chapter 38a, Crime Victims Restitution Act;

(d) order the defendant to pay the costs of any rehabilitative program required by the terms of the agreement; and

(e) order the defendant to comply with any other conditions which could have been imposed as conditions of probation upon conviction and sentencing for the same offense.

(6) A court may not hold a plea in abeyance without the consent of both the prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a plea in abeyance is ~~[not subject to judicial review]~~ final.

(7) No plea may be held in abeyance in any case involving:

(a) a sexual offense against a victim who is under the age of 14[-]; or

(b) a driving under the influence violation under Section 41-6-44.

Section 8. Section **77-2a-3.1** is enacted to read:

77-2a-3.1. Restrictions on pleas to driving under the influence violations.

(1) As used in this section, an "education or treatment incentive program" means a program that includes:

(a) a screening as defined in Section 41-6-44 that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105;

(b) an assessment as defined in Section 41-6-44 that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105, if found appropriate in a screening under Subsection (1)(a);

(c) (i) an educational series as defined in Section 41-6-44 that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105; or

(ii) a substance abuse treatment program as defined in Section 41-6-44 that is approved by the Board of Substance Abuse and Mental Health in accordance with Section 62A-15-105, if found appropriate in an assessment under Subsection (1)(b);

(d) regular court reviews for compliance;

(e) random drug and alcohol testing; and

(f) if a substance abuse treatment program is found appropriate under Subsection (1)(c), at least monthly reports from the substance abuse treatment program to the court.

(2) (a) A plea may not be held in abeyance in any case involving a driving under the influence violation under Section 41-6-44 that is punishable as a felony or class A misdemeanor.

(b) A plea to a driving under the influence violation under Section 41-6-44 that is punishable as a class B misdemeanor may not be held in abeyance unless:

(i) (A) the plea is entered pursuant to an education or treatment incentive program; and

(B) the education or treatment incentive program is approved by the district attorney, county attorney, attorney general, or chief prosecutor of a municipality; or

(ii) evidentiary issues or other circumstances justify resolution of the case with a plea in abeyance.

(3) A plea to a driving under the influence violation under Section 41-6-44 may not be dismissed or entered as a conviction of a lesser offense pursuant to Subsection (2)(b)(i) if the defendant:

(a) has been convicted of any other violation which is defined as a conviction under Subsection 41-6-44(1);

(b) has had a plea to any other violation of Section 41-6-44 held in abeyance; or

(c) in the current case:

(i) operated a vehicle in a negligent manner proximately resulting in bodily injury to another or property damage to an extent requiring reporting to a law enforcement agency under Section 41-6-31;

(ii) had a blood or breath alcohol level of .16 or higher; or

(iii) had a passenger under 18 years of age in the vehicle at the time of the offense.

(4) A decision by a prosecuting attorney not to establish an education or treatment incentive program is final.

Section 9. Section **77-18-11** is amended to read:

77-18-11. Petition -- Expungement of conviction -- Certificate of eligibility -- Fee -- Notice -- Written evaluation -- Objections -- Hearing.

(1) A person convicted of a crime may petition the convicting court for an expungement of the record of conviction.

(2) (a) The court shall require receipt of a certificate of eligibility issued by the division under Section 77-18-12.

(b) The fee for each certificate of eligibility is \$25. This fee remains in effect until changed by the division through the process under Section 63-38-3.2.

(c) Funds generated under Subsection (2)(b) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in providing the information.

(3) The petition and certificate of eligibility shall be filed with the court and served upon the prosecuting attorney and the Department of Corrections.

(4) A victim shall receive notice of a petition for expungement if, prior to the entry of an expungement order, the victim or, in the case of a minor or a person who is incapacitated or deceased, the victim's next of kin or authorized representative, submits a written and signed request for notice to the office of the Department of Corrections in the judicial district in which the crime occurred or judgment was entered.

(5) The Department of Corrections shall serve notice of the expungement request by first-class mail to the victim at the most recent address of record on file with the department. The notice shall include a copy of the petition, certificate of eligibility, and statutes and rules applicable to the petition.

(6) The court in its discretion may request a written evaluation by Adult Parole and Probation of the Department of Corrections.

(a) The evaluation shall include a recommendation concerning the petition for expungement.

(b) If expungement is recommended, the evaluation shall include certification that the petitioner has completed all requirements of sentencing and probation or parole and state any rationale that would support or refute consideration for expungement.

(c) The conclusions and recommendations contained in the evaluation shall be provided to the petitioner and the prosecuting attorney.

(7) If the prosecuting attorney or a victim submits a written objection to the court concerning the petition within 30 days after service of the notice, or if the petitioner objects to the

conclusions and recommendations in the evaluation within 15 days after receipt of the conclusions and recommendations, the court shall set a date for a hearing and notify the prosecuting attorney for the jurisdiction, the petitioner, and the victim of the date set for the hearing.

(8) Any person who has relevant information about the petitioner may testify at the hearing.

(9) The prosecuting attorney may respond to the court with a recommendation or objection within 30 days.

(10) If an objection is not received under Subsection (7), the expungement may be granted without a hearing.

(11) A court may not expunge a conviction of [a]:

(a) a capital felony;

(b) a first degree felony;

(c) a second degree forcible felony; [or]

(d) any sexual act against a minor[;]; or

(e) an offense for which a certificate of eligibility may not be issued under Section 77-18-12.

Section 10. Section **77-18-12** is amended to read:

77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior convictions.

(1) The division shall issue a certificate of eligibility to a petitioner seeking to obtain expungement for a criminal record unless prior to issuing a certificate of eligibility the division finds, through records of a governmental agency, including national criminal data bases that:

(a) the conviction for which expungement is sought is:

(i) a capital felony[;];

(ii) a first degree felony[;];

(iii) a second degree forcible felony[;];

(iv) automobile homicide;

(v) a felony violation of Section 41-6-44;

(vi) a conviction involving a sexual act against a minor~~;~~;

(vii) any registerable sex offense as defined in Subsection 77-27-21.5(1)(d)~~;~~; or

(viii) an attempt, solicitation, or conspiracy to commit any offense listed in ~~that~~

Subsection 77-27-21.5(1)(d);

(b) the petitioner's record includes two or more convictions for any type of offense which would be classified as a felony under Utah law, not arising out of a single criminal episode, regardless of the jurisdiction in which the convictions occurred;

(c) the petitioner has previously obtained expungement in any jurisdiction of a crime which would be classified as a felony in Utah;

(d) the petitioner has previously obtained expungement in any jurisdiction of two or more convictions which would be classified as misdemeanors in Utah unless the convictions would be classified as class B or class C misdemeanors in Utah and 15 years have passed since these misdemeanor convictions;

(e) the petitioner was convicted in any jurisdiction, subsequent to the conviction for which expungement is sought and within the time periods as provided in Subsection (2), of a crime which would be classified in Utah as a felony, misdemeanor, or infraction;

(f) the person has a combination of three or more convictions not arising out of a single criminal episode including any conviction for an offense which would be classified under Utah law as a class B or class A misdemeanor or as a felony, including any misdemeanor and felony convictions previously expunged, regardless of the jurisdiction in which the conviction or expungement occurred; or

(g) a proceeding involving a crime is pending or being instituted in any jurisdiction against the petitioner.

(2) A conviction may not be included for purposes of Subsection (1)(e), and a conviction may not be considered for expungement until, after the petitioner's release from incarceration, parole, or probation, whichever occurs last and all fines ordered by the court have been satisfied, at least the following period of time has elapsed:

(a) seven years in the case of a felony;

(b) ten years in the case of [~~an alcohol or drug-related traffic offense under Title 41, Motor Vehicles;~~];

(i) a misdemeanor conviction or the equivalent of a misdemeanor conviction as defined in Subsection 41-6-44(1); or

(ii) a felony violation of Subsection 58-37-8(2)(g);

(c) five years in the case of a class A misdemeanor;

(d) three years in the case of any other misdemeanor or infraction under Title 76, Utah Criminal Code; or

(e) 15 years in the case of multiple class B or class C misdemeanors.

(3) A petitioner who would not be eligible to receive a certificate of eligibility under Subsection (1)(d) or (f) may receive a certificate of eligibility for one additional expungement if at least 15 years have elapsed since the last of any of the following:

(a) release from incarceration, parole, or probation relating to the most recent conviction; and

(b) any other conviction which would have prevented issuance of a certificate of eligibility under Subsection (1)(e).

(4) If, after reasonable research, a disposition for an arrest on the criminal history file is unobtainable, the division may issue a special certificate giving discretion of eligibility to the court.

Section 11. Study.

The Commission on Criminal and Juvenile Justice shall study the use of pleas in abeyance involving driving under the influence violations and report to the Transportation Interim Committee no later than October 31, 2005.

Section 12. Effective date.

This bill takes effect on May 3, 2004, except that the amendments to Section 77-2a-3 take effect on July 1, 2006.