

1 **DRIVING UNDER THE INFLUENCE**

2 **AMENDMENTS**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Carlene M. Walker**

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7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that an attorney with felony jurisdiction over the defendant must approve a  
14 plea of guilty or no contest to a possible felony DUI charge;

15 ▶ amends the definition of conviction to:

16 • include a violation by a person that knowingly and intentionally has any amount  
17 of a controlled substance in the person's body and operates a vehicle in a  
18 negligent manner causing serious bodily injury or death; and

19 • provide that a plea which is held in abeyance on or after May 3, 2004 is the  
20 equivalent of a conviction for purposes of enhancement of penalties for DUI  
21 offenses and for purposes of expungement;

22 ▶ amends and redefines screening and assessment and provides that an assessment  
23 shall be ordered if found appropriate in a screening;

24 ▶ provides that a plea to a DUI charge may not be held in abeyance unless:

25 • the plea is entered pursuant to an education or treatment incentive program  
26 approved by the prosecuting attorney; or

27 • circumstances justify resolution through a plea in abeyance;



- 28           ▶ provides that a court may not expunge a person's record:
- 29           • for a conviction of an automobile homicide or a felony DUI violation; or
- 30           • within ten years for a felony violation by a person that knowingly and
- 31 intentionally has any amount of a controlled substance in the person's body and
- 32 operates a vehicle in a negligent manner causing serious bodily injury or death
- 33 or for the equivalent of a misdemeanor DUI conviction; and
- 34           ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36           None

37 **Other Special Clauses:**

38           None

39 **Utah Code Sections Affected:**

40 AMENDS:

41           **17-43-201**, as renumbered and amended by Chapter 22 and last amended by Chapter  
42 262, Laws of Utah 2003

43           **41-6-43.8**, as enacted by Chapter 15, Laws of Utah 2003

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

45           **62A-15-105**, as last amended by Chapter 22, Laws of Utah 2003

46           **76-5-207**, as last amended by Chapter 10, Laws of Utah 2003

47           **77-2a-3**, as last amended by Chapter 35, Laws of Utah 2002

48           **77-18-11**, as last amended by Chapter 227, Laws of Utah 1999

49           **77-18-12**, as last amended by Chapter 267, Laws of Utah 2002



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

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

53           **17-43-201. Local substance abuse authorities -- Responsibilities.**

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

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

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

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

64 (i) develop substance abuse prevention and treatment services plans; and

65 (ii) provide substance abuse services to residents of the county.

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

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

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

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

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

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

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

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

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

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

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

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

105 (4) Each local substance abuse authority shall:

106 (a) review and evaluate substance abuse prevention and treatment needs and services,  
107 including substance abuse needs and services for individuals incarcerated in a county jail or  
108 other county correctional facility;

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

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

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

115 (c) establish and maintain, either directly or by contract, programs licensed under Title  
116 62A, Chapter 2, Licensure of Programs and Facilities;

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

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

120 (f) establish and require contract providers to establish administrative, clinical,

121 procurement, personnel, financial, and management policies regarding substance abuse services  
122 and facilities, in accordance with the policies of the board, and state and federal law;

123 (g) establish mechanisms allowing for direct citizen input;

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

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

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

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

133 (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal  
134 Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts  
135 Act, and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and  
136 Other Local Entities;

137 (m) for persons convicted of driving under the influence in violation of Subsection  
138 41-6-44(2) or Section 41-6-44.6, conduct the following as defined in Section 41-6-44:

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

140 (ii) an assessment;

141 [~~(ii)~~] (iii) an educational series; and

142 [~~(iii)~~] (iv) substance abuse treatment; and

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

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

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

151 (i) the division;

- 152 (ii) the local substance abuse authority director;
- 153 (iii) (A) the county treasurer and county or district attorney; or
- 154 (B) if two or more counties jointly provide substance abuse services under an
- 155 agreement under Subsection (2), the designated treasurer and the designated legal officer;
- 156 (iv) the county legislative body; and
- 157 (v) in a county with a county executive that is separate from the county legislative
- 158 body, the county executive;
- 159 (b) the county auditor may examine and audit the entity's financial and other records
- 160 relevant to the entity's performance of the services provided to the local substance abuse
- 161 authority; and
- 162 (c) the entity will comply with the provisions of Subsection (3)(b).
- 163 (6) A local substance abuse authority may receive property, grants, gifts, supplies,
- 164 materials, contributions, and any benefit derived therefrom, for substance abuse services. If
- 165 those gifts are conditioned upon their use for a specified service or program, they shall be so
- 166 used.
- 167 (7) (a) As used in this section, "public funds" means the same as that term is defined in
- 168 Section 17-43-203.
- 169 (b) Nothing in this section limits or prohibits an organization exempt under Section
- 170 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any
- 171 financial arrangement that is otherwise lawful for that organization.
- 172 Section 2. Section **41-6-43.8** is amended to read:
- 173 **41-6-43.8. Acceptance of plea of guilty to DUI – Restrictions -- Verification of**
- 174 **prior violations -- Prosecutor to examine defendant's record.**
- 175 (1) A court may not accept a plea of guilty or no contest to a charge under Section
- 176 41-6-44 unless:
- 177 (a) the prosecutor agrees to the plea:
- 178 (i) in open court;
- 179 (ii) in writing; or
- 180 (iii) by another means of communication which the court finds adequate to record the
- 181 prosecutor's agreement;
- 182 (b) the charge is filed by information as defined under Section 77-1-3; or

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

185 (i) more than one prior violation within the previous ten years of any offense which, if  
186 the defendant were convicted, would qualify as a "conviction" as defined under Subsection  
187 41-6-44(1);

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

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

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

191 (a) a written indication on the citation;

192 (b) a separate written document; or

193 (c) any other means which the court finds adequate to record the law enforcement  
194 agency's verification.

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

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

200 (i) approved by:

201 (A) a district attorney;

202 (B) a deputy district attorney;

203 (C) a county attorney;

204 (D) a deputy county attorney;

205 (E) the attorney general; or

206 (F) an assistant attorney general; and

207 (ii) the attorney identified in Subsection (3)(b)(i) has felony jurisdiction over the case.

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

210 Section 3. Section **41-6-44** is amended to read:

211 **41-6-44. Driving under the influence of alcohol, drugs, or a combination of both**  
212 **or with specified or unsafe blood alcohol concentration -- Measurement of blood or**  
213 **breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties --**

214 **Suspension or revocation of license.**

215 (1) As used in this section:

216 (a) "assessment" means an in-depth interview:

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

218 (A) substance abuse treatment that is obtained at a substance abuse program;

219 (B) an educational series; or

220 (C) a combination of Subsections (1)(a)(i)(A) and (1)(a)(i)(B); and

221 (ii) that is approved by the Board of Substance Abuse and Mental Health in accordance

222 with Section 62A-15-105.

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

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

225 [~~(ii)~~] (B) alcohol, any drug, or a combination of both-related reckless driving under

226 Subsections (9) and (10);

227 [~~(iii)~~] (C) Section 41-6-44.6, driving with any measurable controlled substance that is

228 taken illegally in the body;

229 [~~(iv)~~] (D) local ordinances similar to this section or alcohol, any drug, or a combination

230 of both-related reckless driving adopted in compliance with Section 41-6-43;

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

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

233 [~~(vi)~~] (G) a violation described in Subsections (1)[~~(a)~~]~~(i)~~ (b)(i)(A) through [~~(v)~~]

234 (1)(b)(i)(F), which judgment of conviction is reduced under Section 76-3-402; or

235 [~~(vii)~~] (H) statutes or ordinances in effect in any other state, the United States, or any

236 district, possession, or territory of the United States which would constitute a violation of this

237 section or alcohol, any drug, or a combination of both-related reckless driving if committed in

238 this state, including punishments administered under 10 U.S.C. Sec. 815;

239 (ii) A plea of guilty or no contest to a violation described in Subsections (1)(b)(i)(A)

240 through (1)(b)(i)(H) which plea is held in abeyance under Title 77, Chapter 2a, Pleas in

241 Abeyance, on or after May 3, 2004 is the equivalent of a conviction, even if the charge has

242 been subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for

243 purposes of:

244 (A) enhancement of penalties under:



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

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

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

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

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

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

255 (A) an assessment; or

256 (B) an educational series; and

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

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

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

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

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

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

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

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

276 test;

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

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

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

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

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

288 (i) class B misdemeanor; or

289 (ii) class A misdemeanor if the person:

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

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

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

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

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

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

302 (i) work in a compensatory-service work program for not less than 48 hours; or

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

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

- 307 (i) order the person to participate in a screening [~~and assessment~~];
- 308 (ii) order the person to participate in an assessment, if it is found appropriate by a
- 309 screening under Subsection (4)(c)(i);
- 310 [~~(ii)~~] (iii) order the person to participate in an educational series if the court does not
- 311 order substance abuse treatment as described under Subsection (4)(d); and
- 312 [~~(iii)~~] (iv) impose a fine of not less than \$700.
- 313 (d) The court may order the person to obtain substance abuse treatment if the substance
- 314 abuse treatment program determines that substance abuse treatment is appropriate.
- 315 (e) (i) Except as provided in Subsection (4)(e)(ii), the court may order probation for the
- 316 person in accordance with Subsection (14).
- 317 (ii) If there is admissible evidence that the person had a blood alcohol level of .16 or
- 318 higher, the court shall order probation for the person in accordance with Subsection (14).
- 319 (5) (a) If a person is convicted under Subsection (2) within ten years of a prior
- 320 conviction under this section, the court shall as part of any sentence impose a mandatory jail
- 321 sentence of not less than 240 consecutive hours.
- 322 (b) The court may, as an alternative to all or part of a jail sentence, require the person
- 323 to:
- 324 (i) work in a compensatory-service work program for not less than 240 hours; or
- 325 (ii) participate in home confinement through the use of electronic monitoring in
- 326 accordance with Subsection (13).
- 327 (c) In addition to the jail sentence, compensatory-service work program, or home
- 328 confinement, the court shall:
- 329 (i) order the person to participate in a screening [~~and assessment~~];
- 330 (ii) order the person to participate in an assessment, if it is found appropriate by a
- 331 screening under Subsection (5)(c)(i);
- 332 [~~(ii)~~] (iii) order the person to participate in an educational series if the court does not
- 333 order substance abuse treatment as described under Subsection (5)(d); and
- 334 [~~(iii)~~] (iv) impose a fine of not less than \$800.
- 335 (d) The court may order the person to obtain substance abuse treatment if the substance
- 336 abuse treatment program determines that substance abuse treatment is appropriate.
- 337 (e) The court shall order probation for the person in accordance with Subsection (14).

338 (6) (a) A conviction for a violation of Subsection (2) is a third degree felony if it is:  
339 (i) a third or subsequent conviction under this section within ten years of two or more  
340 prior convictions; or  
341 (ii) at any time after a conviction of:  
342 (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;  
343 or  
344 (B) a felony violation under this section that is committed after July 1, 2001.  
345 (b) Any conviction described in this Subsection (6) which judgment of conviction is  
346 reduced under Section 76-3-402 is a conviction for purposes of this section.  
347 (c) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison  
348 sentence and places the defendant on probation the court shall impose:  
349 (i) a fine of not less than \$1,500; and  
350 (ii) a mandatory jail sentence of not less than 1,500 hours.  
351 (d) For Subsection (6)(a) or (c), the court shall impose an order requiring the person to  
352 obtain a screening and assessment and substance abuse treatment at a substance abuse  
353 treatment program providing intensive care or inpatient treatment and long-term closely  
354 supervised follow-through after treatment for not less than 240 hours.  
355 (e) In addition to the penalties required under Subsection (6)(c), if the court orders  
356 probation, the probation shall be supervised probation which may include requiring the person  
357 to participate in home confinement through the use of electronic monitoring in accordance with  
358 Subsection (13).  
359 (7) The mandatory portion of any sentence required under this section may not be  
360 suspended and the convicted person is not eligible for parole or probation until any sentence  
361 imposed under this section has been served. Probation or parole resulting from a conviction for  
362 a violation under this section may not be terminated.  
363 (8) (a) (i) The provisions in Subsections (4), (5), and (6) that require a sentencing court  
364 to order a convicted person to: participate in a screening [~~and~~]; an assessment, if appropriate;  
365 and an educational series; obtain, in the discretion of the court, substance abuse treatment;  
366 obtain, mandatorily, substance abuse treatment; or do a combination of those things, apply to a  
367 conviction for a violation of Section 41-6-44.6 or 41-6-45 under Subsection (9).  
368 (ii) The court shall render the same order regarding screening [~~and~~], assessment, an

369 educational series, or substance abuse treatment in connection with a first, second, or  
370 subsequent conviction under Section 41-6-44.6 or 41-6-45 under Subsection (9), as the court  
371 would render in connection with applying respectively, the first, second, or subsequent  
372 conviction requirements of Subsections (4), (5), and (6).

373 (b) The court shall notify the Driver License Division if a person fails to:

374 (i) complete all court ordered:

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

376 (B) assessment;

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

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

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

380 (ii) pay all fines and fees, including fees for restitution and treatment costs. Upon  
381 receiving the notification, the division shall suspend the person's driving privilege in  
382 accordance with Subsections 53-3-221(2) and (3).

383 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a  
384 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section  
385 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this  
386 section, the prosecution shall state for the record a factual basis for the plea, including whether  
387 or not there had been consumption of alcohol, drugs, or a combination of both, by the  
388 defendant in connection with the violation.

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

392 (b) The court shall advise the defendant before accepting the plea offered under this  
393 Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section  
394 41-6-45.

395 (c) The court shall notify the Driver License Division of each conviction of Section  
396 41-6-44.6 or 41-6-45 entered under this Subsection (9).

397 (10) A peace officer may, without a warrant, arrest a person for a violation of this  
398 section when the officer has probable cause to believe the violation has occurred, although not  
399 in his presence, and if the officer has probable cause to believe that the violation was

400 committed by the person.

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

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

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

407 (iii) suspend or revoke the license of a person as ordered by the court under Subsection  
408 (12).

409 (b) The Driver License Division shall subtract from any suspension or revocation  
410 period the number of days for which a license was previously suspended under Section  
411 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon  
412 which the record of conviction is based.

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

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

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

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

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

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

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

429 (c) The court shall order the appropriate entity described in Subsection (13)(e) to place  
430 an electronic monitoring device on the person and install electronic monitoring equipment in

431 the residence of the person or other specified location.

432 (d) The court may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

462 (15) If a person is convicted of a violation of Subsection (2) and there is admissible  
463 evidence that the person had a blood alcohol level of .16 or higher, [~~then if the court does not~~  
464 ~~order~~] the court shall order the following, or describe on record why the order or orders are not  
465 appropriate:

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

468 (b) one or both of the following [~~penalties, the court shall enter the reasons on the~~  
469 ~~record~~]:

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

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

474 Section 4. Section **62A-15-105** is amended to read:

475 **62A-15-105. Authority and responsibilities of board.**

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

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

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

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

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

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

492 (6) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,



493 make rules approving the form and content of substance abuse treatment, educational series,  
494 [and], screening, and assessment that are described in Section 41-6-44.

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

496 **76-5-207. Automobile homicide.**

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

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

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

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

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

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

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

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

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

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

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

523 (b) As used in this Subsection (3), "criminally negligent" means criminal negligence as

524 defined by Subsection 76-2-103(4).

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

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

530 (6) The fact that a person charged with violating this section is or has been legally  
531 entitled to use alcohol or a drug is not a defense.

532 (7) Evidence of a defendant's blood or breath alcohol content or drug content is  
533 admissible except when prohibited by Rules of Evidence or the constitution.

534 Section 6. Section 77-2a-3 is amended to read:

535 **77-2a-3. Manner of entry of plea -- Powers of court.**

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

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

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

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

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

548 (d) regular court reviews for compliance;

549 (e) random drug and alcohol testing; and

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

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

554 [(2) (3) A plea in abeyance agreement may provide that the court may, upon finding

555 that the defendant has successfully completed the terms of the agreement:

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

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

559 ~~[(3)]~~ (4) Upon finding that a defendant has successfully completed the terms of a plea  
560 in abeyance agreement, the court shall reduce the degree of the offense, dismiss the case only  
561 as provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a  
562 defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not  
563 invoke Section 76-3-402 to further reduce the degree of the offense.

564 ~~[(4)]~~ (5) The court may require the Department of Corrections to assist in the  
565 administration of the plea in abeyance agreement as if the defendant were on probation to the  
566 court under Section 77-18-1.

567 ~~[(5)]~~ (6) The court may upon acceptance of a plea in abeyance agreement and pursuant  
568 to the terms of the agreement:

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

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

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

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

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

581 ~~[(6)]~~ (7) A court may not hold a plea in abeyance without the consent of both the  
582 prosecuting attorney and the defendant. A decision by a prosecuting attorney not to establish  
583 an education or treatment incentive program or agree to a plea in abeyance is not subject to  
584 judicial review.

585 ~~[(7) No]~~ (8) A plea may not be held in abeyance in any case involving a sexual offense

586 against a victim who is under the age of 14.

587 (9) A plea to a violation of Section 41-6-44 may not be held in abeyance unless:

588 (a) (i) the plea is to be entered pursuant to an education or treatment incentive program;

589 and

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

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

594 Section 7. Section **77-18-11** is amended to read:

595 **77-18-11. Petition -- Expungement of conviction -- Certificate of eligibility -- Fee**  
596 **-- Notice -- Written evaluation -- Objections -- Hearing.**

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

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

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

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

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

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

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

616 (6) The court in its discretion may request a written evaluation by Adult Parole and

617 Probation of the Department of Corrections.

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

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

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

625 (7) If the prosecuting attorney or a victim submits a written objection to the court  
626 concerning the petition within 30 days after service of the notice, or if the petitioner objects to  
627 the conclusions and recommendations in the evaluation within 15 days after receipt of the  
628 conclusions and recommendations, the court shall set a date for a hearing and notify the  
629 prosecuting attorney for the jurisdiction, the petitioner, and the victim of the date set for the  
630 hearing.

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

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

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

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

638 (a) a capital felony;

639 (b) a first degree felony;

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

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

642 (e) an offense for which a certificate of eligibility may not be issued under Section  
643 77-18-12.

644 Section 8. Section **77-18-12** is amended to read:

645 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior**  
646 **convictions.**

647 (1) The division shall issue a certificate of eligibility to a petitioner seeking to obtain

648 expungement for a criminal record unless prior to issuing a certificate of eligibility the division  
649 finds, through records of a governmental agency, including national criminal data bases that:

- 650 (a) the conviction for which expungement is sought is:
  - 651 (i) a capital felony[;];
  - 652 (ii) a first degree felony[;];
  - 653 (iii) a second degree forcible felony[;];
  - 654 (iv) automobile homicide;
  - 655 (v) a felony violation of Section 41-6-44;
  - 656 (vi) a conviction involving a sexual act against a minor[;];
  - 657 (vii) any registerable sex offense as defined in Subsection 77-27-21.5(1)(d)[;]; or
  - 658 (viii) an attempt, solicitation, or conspiracy to commit any offense listed in [~~that~~  
659 Subsection 77-27-21.5(1)(d)];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Legislative Review Note**  
**as of 11-19-03 2:40 PM**

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

**Office of Legislative Research and General Counsel**

**Interim Committee Note**

**S.B. 20**

**12-10-03 3:31 PM**

**as of 12-10-03 3:31 PM**

The Transportation Interim Committee recommended this bill.