

Senator Carlene M. Walker proposes the following substitute bill:

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;



- 26 ▶ beginning on July 1, 2006, prohibits all pleas in abeyance for driving under the
- 27 influence violations;
- 28 ▶ provides sunset provisions;
- 29 ▶ provides that a court may not expunge a person's record:
- 30 • for a conviction of an automobile homicide or a felony DUI violation; or
- 31 • within ten years for a felony violation by a person that knowingly and
- 32 intentionally has any amount of a controlled substance in the person's body and
- 33 operates a vehicle in a negligent manner causing serious bodily injury or death
- 34 or for the equivalent of a misdemeanor DUI conviction;
- 35 ▶ requires the Commission on Criminal and Juvenile Justice to study pleas in
- 36 abeyance for driving under the influence violations and report to the Transportation
- 37 Interim Committee; and
- 38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 This bill provides an effective date.

43 **Utah Code Sections Affected:**

44 AMENDS:

- 45 **17-43-201**, as renumbered and amended by Chapter 22 and last amended by Chapter
- 46 262, Laws of Utah 2003
- 47 **41-6-43.8**, as enacted by Chapter 15, Laws of Utah 2003
- 48 **41-6-44**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session
- 49 **62A-15-105**, as last amended by Chapter 22, Laws of Utah 2003
- 50 **76-5-207**, as last amended by Chapter 10, Laws of Utah 2003
- 51 **77-2a-3**, as last amended by Chapter 35, Laws of Utah 2002
- 52 **77-18-11**, as last amended by Chapter 227, Laws of Utah 1999
- 53 **77-18-12**, as last amended by Chapter 267, Laws of Utah 2002

54 ENACTS:

- 55 **63-55b-177**, Utah Code Annotated 1953
- 56 **77-2a-3.1**, Utah Code Annotated 1953

57 **Uncodified Material Affected:**
58 ENACTS UNCODIFIED MATERIAL



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

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

61 **17-43-201. Local substance abuse authorities -- Responsibilities.**

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

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

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

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

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

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

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

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

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

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

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

86 (ii) provide for the appointment of an independent auditor or a county auditor of one of
87

88 the participating counties as the designated auditing officer for the combined substance abuse
89 authorities;

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

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

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

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

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

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

114 (4) Each local substance abuse authority shall:

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

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

119 that includes:

- 120 (i) provisions for services, either directly by the substance abuse authority or by
121 contract, for adults, youth, and children, including those incarcerated in a county jail or other
122 county correctional facility; and
- 123 (ii) primary prevention, targeted prevention, early intervention, and treatment services;
- 124 (c) establish and maintain, either directly or by contract, programs licensed under Title
125 62A, Chapter 2, Licensure of Programs and Facilities;
- 126 (d) appoint directly or by contract a full or part time director for substance abuse
127 programs, and prescribe the director's duties;
- 128 (e) provide input and comment on new and revised policies established by the board;
- 129 (f) establish and require contract providers to establish administrative, clinical,
130 procurement, personnel, financial, and management policies regarding substance abuse services
131 and facilities, in accordance with the policies of the board, and state and federal law;
- 132 (g) establish mechanisms allowing for direct citizen input;
- 133 (h) annually contract with the division to provide substance abuse programs and
134 services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and
135 Mental Health Act;
- 136 (i) comply with all applicable state and federal statutes, policies, audit requirements,
137 contract requirements, and any directives resulting from those audits and contract requirements;
- 138 (j) promote or establish programs for the prevention of substance abuse within the
139 community setting through community-based prevention programs;
- 140 (k) provide funding equal to at least 20% of the state funds that it receives to fund
141 services described in the plan;
- 142 (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal
143 Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts
144 Act, and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and
145 Other Local Entities;
- 146 (m) for persons convicted of driving under the influence in violation of Subsection
147 41-6-44(2) or Section 41-6-44.6, conduct the following as defined in Section 41-6-44:
- 148 (i) a screening [~~and~~];
- 149 (ii) an assessment;

150 [~~(ii)~~] (iii) an educational series; and
151 [~~(iii)~~] (iv) substance abuse treatment; and
152 (n) utilize proceeds of the accounts described in Subsection 62A-15-503(1) to
153 supplement the cost of providing the services described in Subsection (4)(m).
154 (5) Before disbursing any public funds, each local substance abuse authority shall
155 require that each entity that receives any public funds from the local substance abuse authority
156 agrees in writing that:
157 (a) the entity's financial records and other records relevant to the entity's performance of
158 the services provided to the local substance abuse authority, except patient identifying
159 information, shall be subject to examination by:
160 (i) the division;
161 (ii) the local substance abuse authority director;
162 (iii) (A) the county treasurer and county or district attorney; or
163 (B) if two or more counties jointly provide substance abuse services under an
164 agreement under Subsection (2), the designated treasurer and the designated legal officer;
165 (iv) the county legislative body; and
166 (v) in a county with a county executive that is separate from the county legislative
167 body, the county executive;
168 (b) the county auditor may examine and audit the entity's financial and other records
169 relevant to the entity's performance of the services provided to the local substance abuse
170 authority; and
171 (c) the entity will comply with the provisions of Subsection (3)(b).
172 (6) A local substance abuse authority may receive property, grants, gifts, supplies,
173 materials, contributions, and any benefit derived therefrom, for substance abuse services. If
174 those gifts are conditioned upon their use for a specified service or program, they shall be so
175 used.
176 (7) (a) As used in this section, "public funds" means the same as that term is defined in
177 Section 17-43-203.
178 (b) Nothing in this section limits or prohibits an organization exempt under Section
179 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any
180 financial arrangement that is otherwise lawful for that organization.

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

182 **41-6-43.8. Acceptance of plea of guilty to DUI – Restrictions -- Verification of**
183 **prior violations -- Prosecutor to examine defendant's record.**

184 (1) A court may not accept a plea of guilty or no contest to a charge under Section
185 41-6-44 unless:

186 (a) the prosecutor agrees to the plea:

187 (i) in open court;

188 (ii) in writing; or

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

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

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

194 (i) more than one prior violation within the previous ten years of any offense which, if
195 the defendant were convicted, would qualify as a "conviction" as defined under Subsection
196 41-6-44(1);

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

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

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

200 (a) a written indication on the citation;

201 (b) a separate written document; or

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

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

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

209 (i) approved by:

210 (A) a district attorney;

211 (B) a deputy district attorney;

- 212 (C) a county attorney;
- 213 (D) a deputy county attorney;
- 214 (E) the attorney general; or
- 215 (F) an assistant attorney general; and
- 216 (ii) the attorney giving approval under Subsection (3)(b)(i) has felony jurisdiction over
- 217 the case.

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

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

221 **41-6-44. Driving under the influence of alcohol, drugs, or a combination of both**
 222 **or with specified or unsafe blood alcohol concentration -- Measurement of blood or**
 223 **breath alcohol -- Criminal punishment -- Arrest without warrant -- Penalties --**
 224 **Suspension or revocation of license.**

225 (1) As used in this section:

226 (a) "assessment" means an in-depth clinical interview with a licensed mental health
 227 therapist:

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

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

230 (B) an educational series; or

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

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

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

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

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

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

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

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

243 (F) Subsection 58-37-8(2)(g):

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

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

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

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

254 (A) enhancement of penalties under:

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

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

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

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

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

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

265 (A) an assessment; or

266 (B) an educational series; and

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

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

272 [~~(e)~~] (f) "substance abuse treatment" means treatment obtained at a substance abuse
273 program that is approved by the Board of Substance Abuse and Mental Health in accordance

274 with Section 62A-15-105;

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

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

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

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

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

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

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

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

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

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

298 (i) class B misdemeanor; or

299 (ii) class A misdemeanor if the person:

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

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

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

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

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

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

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

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

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

317 (i) order the person to participate in a screening [~~and assessment~~];

318 (ii) order the person to participate in an assessment, if it is found appropriate by a
319 screening under Subsection (4)(c)(i);

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

322 [~~(iii)~~] (iv) impose a fine of not less than \$700.

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

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

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

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

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

334 (i) work in a compensatory-service work program for not less than 240 hours; or

335 (ii) participate in home confinement through the use of electronic monitoring in

336 accordance with Subsection (13).

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

339 (i) order the person to participate in a screening [~~and assessment~~];

340 (ii) order the person to participate in an assessment, if it is found appropriate by a
341 screening under Subsection (5)(c)(i);

342 [~~(ii)~~] (iii) order the person to participate in an educational series if the court does not
343 order substance abuse treatment as described under Subsection (5)(d); and

344 [~~(iii)~~] (iv) impose a fine of not less than \$800.

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

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

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

349 (i) a third or subsequent conviction under this section within ten years of two or more
350 prior convictions; or

351 (ii) at any time after a conviction of:

352 (A) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;

353 or

354 (B) a felony violation under this section that is committed after July 1, 2001.

355 (b) Any conviction described in this Subsection (6) which judgment of conviction is
356 reduced under Section 76-3-402 is a conviction for purposes of this section.

357 (c) Under Subsection (3)(b) or (6)(a), if the court suspends the execution of a prison
358 sentence and places the defendant on probation the court shall impose:

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

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

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

365 (e) In addition to the penalties required under Subsection (6)(c), if the court orders
366 probation, the probation shall be supervised probation which may include requiring the person

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

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

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

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

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

384 (i) complete all court ordered:

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

386 (B) assessment;

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

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

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

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

393 (9) (a) (i) When the prosecution agrees to a plea of guilty or no contest to a charge of a
394 violation of Section 41-6-45, of an ordinance enacted under Section 41-6-43, or of Section
395 41-6-44.6 in satisfaction of, or as a substitute for, an original charge of a violation of this
396 section, the prosecution shall state for the record a factual basis for the plea, including whether
397 or not there had been consumption of alcohol, drugs, or a combination of both, by the

398 defendant in connection with the violation.

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

402 (b) The court shall advise the defendant before accepting the plea offered under this
403 Subsection (9)(b) of the consequences of a violation of Section 41-6-44.6 or of Section
404 41-6-45.

405 (c) The court shall notify the Driver License Division of each conviction of Section
406 41-6-44.6 or 41-6-45 entered under this Subsection (9).

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

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

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

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

417 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
418 (12).

419 (b) The Driver License Division shall subtract from any suspension or revocation
420 period the number of days for which a license was previously suspended under Section
421 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon
422 which the record of conviction is based.

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

427 (b) If the court suspends or revokes the person's license under this Subsection (12)(b),
428 the court shall prepare and send to the Driver License Division an order to suspend or revoke

429 that person's driving privileges for a specified period of time.

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

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

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

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

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

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

442 (d) The court may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

485 **62A-15-105. Authority and responsibilities of board.**

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

489 (1) in establishing policy, seek input from local substance abuse authorities, local
490 mental health authorities, consumers, providers, advocates, division staff, and other interested

491 parties as determined by the board;

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

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

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

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

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

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

506 **63-55b-177. Repeal dates, Title 77.**

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

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

509 **76-5-207. Automobile homicide.**

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

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

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

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

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

521 (b) A conviction for a violation of this Subsection (2) is a second degree felony if it is

522 subsequent to a conviction as defined in Subsection 41-6-44(1)[(a)].

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

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

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

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

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

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

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

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

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

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

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

548 **77-2a-3. Manner of entry of plea -- Powers of court.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

585 **77-2a-3.1. Restrictions on pleas to driving under the influence violations.**

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

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

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

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

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

598 (d) regular court reviews for compliance;

599 (e) random drug and alcohol testing; and

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

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

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

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

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

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

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

- 615 (i) has been convicted of any other violation which is defined as a conviction under
616 Section 41-6-44(1);
- 617 (ii) has had a plea to any other violation of Section 41-6-44 held in abeyance; or
618 (iii) in the current case:
- 619 (A) operated a vehicle in a negligent manner proximately resulting in bodily injury to
620 another or property damage to an extent requiring reporting to a law enforcement agency under
621 Section 41-6-31;
- 622 (B) had a blood or breath alcohol level of .16 or higher; or
623 (C) had a passenger under 18 years of age in the vehicle at the time of the offense.
- 624 (b) A plea to any violation of Section 41-6-44 punishable as a class B misdemeanor
625 may be held in abeyance under Subsection (3)(a) if upon successful completion of an education
626 or treatment incentive program it is then entered as a conviction to any offense which qualifies
627 as a conviction under Section 41-6-44(1).
- 628 (4) A decision by a prosecuting attorney not to establish an education or treatment
629 incentive program is not subject to judicial review.

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

631 **77-18-11. Petition -- Expungement of conviction -- Certificate of eligibility -- Fee**
632 **-- Notice -- Written evaluation -- Objections -- Hearing.**

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

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

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

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

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

643 (4) A victim shall receive notice of a petition for expungement if, prior to the entry of
644 an expungement order, the victim or, in the case of a minor or a person who is incapacitated or
645 deceased, the victim's next of kin or authorized representative, submits a written and signed

646 request for notice to the office of the Department of Corrections in the judicial district in which
647 the crime occurred or judgment was entered.

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

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

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

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

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

661 (7) If the prosecuting attorney or a victim submits a written objection to the court
662 concerning the petition within 30 days after service of the notice, or if the petitioner objects to
663 the conclusions and recommendations in the evaluation within 15 days after receipt of the
664 conclusions and recommendations, the court shall set a date for a hearing and notify the
665 prosecuting attorney for the jurisdiction, the petitioner, and the victim of the date set for the
666 hearing.

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

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

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

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

674 (a) a capital felony;

675 (b) a first degree felony;

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

677 (d) any sexual act against a minor[;]; or
678 (e) an offense for which a certificate of eligibility may not be issued under Section
679 77-18-12.

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

681 **77-18-12. Grounds for denial of certificate of eligibility -- Effect of prior**
682 **convictions.**

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

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

687 (i) a capital felony[;];

688 (ii) a first degree felony[;];

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

690 (iv) automobile homicide;

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

692 (vi) a conviction involving a sexual act against a minor[;];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

739 Section 11. **Study.**

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

743 Section 12. **Effective date.**

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