

CRIMINAL PENALTY AND PROSECUTION

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel R. Liljenquist

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to certain criminal penalty and prosecution provisions.

Highlighted Provisions:

This bill:

- ▶ provides that the definition of a conviction, for purposes of certain driving under the influence provisions, only includes convictions arising from a separate episode of driving;

- ▶ provides that a person is guilty of a separate offense for each victim suffering bodily injury, serious bodily injury, or death as a result of the person's violation of the driving under influence or automobile homicide provisions whether or not the injuries arise from the same episode of driving;

- ▶ provides that a person is guilty of a separate offense for each victim suffering serious bodily injury or death as a result of the person's violation of the prohibition on driving a vehicle in a negligent manner and having a measurable amount of a controlled substance in the person's body whether or not the injuries arise from the same episode of driving;

- ▶ changes the standard for a de novo review in district court on a pretrial order excluding evidence from a prosecutor certifying that exclusion of that evidence



28 prevents continued prosecution to a prosecutor certifying that exclusion of that evidence
29 impairs continued prosecution; and
30 ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **41-6a-501**, as last amended by Laws of Utah 2008, Chapter 226

38 **41-6a-503**, as last amended by Laws of Utah 2007, Chapter 261

39 **58-37-8**, as last amended by Laws of Utah 2008, Chapter 295

40 **76-5-207**, as last amended by Laws of Utah 2008, Chapter 226

41 **78A-7-118**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

44 Section 1. Section **41-6a-501** is amended to read:

45 **41-6a-501. Definitions.**

46 (1) As used in this part:

47 (a) "Assessment" means an in-depth clinical interview with a licensed mental health
48 therapist:

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

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

51 (B) an educational series; or

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

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

55 (b) "Drug" or "drugs" means:

56 (i) a controlled substance as defined in Section 58-37-2;

57 (ii) a drug as defined in Section 58-17b-102; or

58 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the

59 human body, can impair the ability of a person to safely operate a motor vehicle.

60 (c) "Educational series" means an educational series obtained at a substance abuse
61 program that is approved by the Board of Substance Abuse and Mental Health in accordance
62 with Section 62A-15-105.

63 (d) "Negligence" means simple negligence, the failure to exercise that degree of care
64 that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

65 (e) "Screening" means a preliminary appraisal of a person:

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

67 (A) an assessment; or

68 (B) an educational series; and

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

71 (f) "Serious bodily injury" means bodily injury that creates or causes:

72 (i) serious permanent disfigurement;

73 (ii) protracted loss or impairment of the function of any bodily member or organ; or

74 (iii) a substantial risk of death.

75 (g) "Substance abuse treatment" means treatment obtained at a substance abuse
76 program that is approved by the Board of Substance Abuse and Mental Health in accordance
77 with Section 62A-15-105.

78 (h) "Substance abuse treatment program" means a state licensed substance abuse
79 program.

80 (i) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in
81 Section 41-6a-102; and

82 (ii) "Vehicle" or "motor vehicle" includes:

83 (A) an off-highway vehicle as defined under Section 41-22-2; and

84 (B) a motorboat as defined in Section 73-18-2.

85 (2) As used in Section 41-6a-503:

86 (a) "Conviction" means any conviction arising from a separate episode of driving for a
87 violation of:

88 (i) driving under the influence under Section 41-6a-502;

89 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a

90 combination of both-related reckless driving under:

91 (I) Section 41-6a-512; and

92 (II) Section 41-6a-528; or

93 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
94 41-6a-502.5;

95 (iii) driving with any measurable controlled substance that is taken illegally in the body
96 under Section 41-6a-517;

97 (iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination
98 of both-related reckless driving, or impaired driving under Section 41-6a-502.5 adopted in
99 compliance with Section 41-6a-510;

100 (v) automobile homicide under Section 76-5-207;

101 (vi) Subsection 58-37-8(2)(g);

102 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of
103 conviction is reduced under Section 76-3-402; or

104 (viii) statutes or ordinances previously in effect in this state or in effect in any other
105 state, the United States, or any district, possession, or territory of the United States which
106 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
107 both-related reckless driving if committed in this state, including punishments administered
108 under 10 U.S.C. Sec. 815.

109 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)
110 through (viii) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,
111 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently
112 reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of:

113 (i) enhancement of penalties under:

114 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and

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

116 (ii) expungement under Section 77-18-12.

117 Section 2. Section **41-6a-503** is amended to read:

118 **41-6a-503. Penalties for driving under the influence violations.**

119 (1) A person convicted the first or second time of a violation of Section 41-6a-502 is
120 guilty of a:

- 121 (a) class B misdemeanor; or
- 122 (b) class A misdemeanor if the person:
- 123 (i) has also inflicted bodily injury upon another as a proximate result of having
- 124 operated the vehicle in a negligent manner;
- 125 (ii) had a passenger under 16 years of age in the vehicle at the time of the offense; or
- 126 (iii) was 21 years of age or older and had a passenger under 18 years of age in the
- 127 vehicle at the time of the offense.

128 (2) A person convicted of a violation of Section 41-6a-502 is guilty of a third degree
129 felony if:

- 130 (a) the person has also inflicted serious bodily injury upon another as a proximate
- 131 result of having operated the vehicle in a negligent manner;
- 132 (b) the person has two or more prior convictions as defined in Subsection
- 133 41-6a-501(2), each of which is within ten years of:
- 134 (i) the current conviction under Section 41-6a-502; or
- 135 (ii) the commission of the offense upon which the current conviction is based; or
- 136 (c) the conviction under Section 41-6a-502 is at any time after a conviction of:
- 137 (i) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;
- 138 (ii) a felony violation of Section 41-6a-502 or a statute previously in effect in this state
- 139 that would constitute a violation of Section 41-6a-502 that is committed after July 1, 2001; or
- 140 (iii) any conviction described in Subsection (2)(c)(i) or (ii) which judgment of
- 141 conviction is reduced under Section 76-3-402.

142 (3) A person is guilty of a separate offense for each victim suffering bodily injury or
143 serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a
144 result of the person's violation of Section 76-5-207 whether or not the injuries arise from the
145 same episode of driving.

146 Section 3. Section **58-37-8** is amended to read:

147 **58-37-8. Prohibited acts -- Penalties.**

148 (1) Prohibited acts A -- Penalties:

149 (a) Except as authorized by this chapter, it is unlawful for any person to knowingly and
150 intentionally:

- 151 (i) produce, manufacture, or dispense, or to possess with intent to produce,

152 manufacture, or dispense, a controlled or counterfeit substance;

153 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
154 arrange to distribute a controlled or counterfeit substance;

155 (iii) possess a controlled or counterfeit substance with intent to distribute; or

156 (iv) engage in a continuing criminal enterprise where:

157 (A) the person participates, directs, or engages in conduct which results in any
158 violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and

159 (B) the violation is a part of a continuing series of two or more violations of Title 58,
160 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with
161 five or more persons with respect to whom the person occupies a position of organizer,
162 supervisor, or any other position of management.

163 (b) Any person convicted of violating Subsection (1)(a) with respect to:

164 (i) a substance classified in Schedule I or II, a controlled substance analog, or
165 gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and
166 upon a second or subsequent conviction is guilty of a first degree felony;

167 (ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree
168 felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

169 (iii) a substance classified in Schedule V is guilty of a class A misdemeanor and upon a
170 second or subsequent conviction is guilty of a third degree felony.

171 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)
172 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier
173 of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on his
174 person or in his immediate possession during the commission or in furtherance of the offense,
175 the court shall additionally sentence the person convicted for a term of one year to run
176 consecutively and not concurrently; and the court may additionally sentence the person
177 convicted for an indeterminate term not to exceed five years to run consecutively and not
178 concurrently.

179 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree
180 felony punishable by imprisonment for an indeterminate term of not less than seven years and
181 which may be for life. Imposition or execution of the sentence may not be suspended, and the
182 person is not eligible for probation.

183 (2) Prohibited acts B -- Penalties:
184 (a) It is unlawful:
185 (i) for any person knowingly and intentionally to possess or use a controlled substance
186 analog or a controlled substance, unless it was obtained under a valid prescription or order,
187 directly from a practitioner while acting in the course of his professional practice, or as
188 otherwise authorized by this chapter;
189 (ii) for any owner, tenant, licensee, or person in control of any building, room,
190 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to
191 be occupied by persons unlawfully possessing, using, or distributing controlled substances in
192 any of those locations; or
193 (iii) for any person knowingly and intentionally to possess an altered or forged
194 prescription or written order for a controlled substance.
195 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:
196 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;
197 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16
198 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree
199 felony; or
200 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part of
201 the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a class A
202 misdemeanor.
203 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a
204 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
205 penalty than provided in this Subsection (2).
206 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
207 substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of
208 marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty
209 of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a
210 third degree felony.
211 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior
212 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or
213 any public jail or other place of confinement shall be sentenced to a penalty one degree greater

214 than provided in Subsection (2)(b), and if the conviction is with respect to controlled
215 substances as listed in:

216 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an
217 indeterminate term as provided by law, and:

218 (A) the court shall additionally sentence the person convicted to a term of one year to
219 run consecutively and not concurrently; and

220 (B) the court may additionally sentence the person convicted for an indeterminate term
221 not to exceed five years to run consecutively and not concurrently; and

222 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an
223 indeterminate term as provided by law, and the court shall additionally sentence the person
224 convicted to a term of six months to run consecutively and not concurrently.

225 (f) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:

226 (i) on a first conviction, guilty of a class B misdemeanor;

227 (ii) on a second conviction, guilty of a class A misdemeanor; and

228 (iii) on a third or subsequent conviction, guilty of a third degree felony.

229 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
230 amounting to a violation of Section 76-5-207:

231 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in his body any
232 measurable amount of a controlled substance; and

233 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
234 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

235 (h) A person who violates Subsection (2)(g) by having in his body:

236 (i) a controlled substance classified under Schedule I, other than those described in
237 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second
238 degree felony;

239 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
240 58-37-4(2)(a)(iii)(S) or (AA) is guilty of a third degree felony; or

241 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class
242 A misdemeanor.

243 (i) A person is guilty of a separate offense for each victim suffering serious bodily
244 injury or death as a result of the person's negligent driving in violation of Subsection

245 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.

246 (3) Prohibited acts C -- Penalties:

247 (a) It is unlawful for any person knowingly and intentionally:

248 (i) to use in the course of the manufacture or distribution of a controlled substance a
249 license number which is fictitious, revoked, suspended, or issued to another person or, for the
250 purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a
251 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
252 person;

253 (ii) to acquire or obtain possession of, to procure or attempt to procure the
254 administration of, to obtain a prescription for, to prescribe or dispense to any person known to
255 be attempting to acquire or obtain possession of, or to procure the administration of any
256 controlled substance by misrepresentation or failure by the person to disclose his receiving any
257 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a
258 prescription or written order for a controlled substance, or the use of a false name or address;

259 (iii) to make any false or forged prescription or written order for a controlled substance,
260 or to utter the same, or to alter any prescription or written order issued or written under the
261 terms of this chapter; or

262 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed
263 to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or
264 device of another or any likeness of any of the foregoing upon any drug or container or labeling
265 so as to render any drug a counterfeit controlled substance.

266 (b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree
267 felony.

268 (4) Prohibited acts D -- Penalties:

269 (a) Notwithstanding other provisions of this section, a person not authorized under this
270 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,
271 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances
272 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if
273 the trier of fact finds the act is committed:

274 (i) in a public or private elementary or secondary school or on the grounds of any of
275 those schools;

- 276 (ii) in a public or private vocational school or postsecondary institution or on the
- 277 grounds of any of those schools or institutions;
- 278 (iii) in those portions of any building, park, stadium, or other structure or grounds
- 279 which are, at the time of the act, being used for an activity sponsored by or through a school or
- 280 institution under Subsections (4)(a)(i) and (ii);
- 281 (iv) in or on the grounds of a preschool or child-care facility;
- 282 (v) in a public park, amusement park, arcade, or recreation center;
- 283 (vi) in or on the grounds of a house of worship as defined in Section 76-10-501;
- 284 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,
- 285 playhouse, or parking lot or structure adjacent thereto;
- 286 (viii) in or on the grounds of a library;
- 287 (ix) within any area that is within 1,000 feet of any structure, facility, or grounds
- 288 included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);
- 289 (x) in the presence of a person younger than 18 years of age, regardless of where the act
- 290 occurs; or
- 291 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or
- 292 distribution of a substance in violation of this section to an inmate or on the grounds of any
- 293 correctional facility as defined in Section 76-8-311.3.
- 294 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony
- 295 and shall be imprisoned for a term of not less than five years if the penalty that would
- 296 otherwise have been established but for this Subsection (4) would have been a first degree
- 297 felony.
- 298 (ii) Imposition or execution of the sentence may not be suspended, and the person is
- 299 not eligible for probation.
- 300 (c) If the classification that would otherwise have been established would have been
- 301 less than a first degree felony but for this Subsection (4), a person convicted under this
- 302 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
- 303 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).
- 304 (d) (i) If the violation is of Subsection (4)(a)(xi):
- 305 (A) the person may be sentenced to imprisonment for an indeterminate term as
- 306 provided by law, and the court shall additionally sentence the person convicted for a term of

307 one year to run consecutively and not concurrently; and

308 (B) the court may additionally sentence the person convicted for an indeterminate term
309 not to exceed five years to run consecutively and not concurrently; and

310 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting with
311 the mental state required for the commission of an offense, directly or indirectly solicits,
312 requests, commands, coerces, encourages, or intentionally aids another person to commit a
313 violation of Subsection (4)(a)(xi).

314 (e) It is not a defense to a prosecution under this Subsection (4) that the actor
315 mistakenly believed the individual to be 18 years of age or older at the time of the offense or
316 was unaware of the individual's true age; nor that the actor mistakenly believed that the
317 location where the act occurred was not as described in Subsection (4)(a) or was unaware that
318 the location where the act occurred was as described in Subsection (4)(a).

319 (5) Any violation of this chapter for which no penalty is specified is a class B
320 misdemeanor.

321 (6) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of
322 guilty or no contest to a violation of this section which is held in abeyance under Title 77,
323 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been
324 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

325 (7) A person may be charged and sentenced for a violation of this section,
326 notwithstanding a charge and sentence for a violation of any other section of this chapter.

327 (8) (a) Any penalty imposed for violation of this section is in addition to, and not in
328 lieu of, any civil or administrative penalty or sanction authorized by law.

329 (b) Where violation of this chapter violates a federal law or the law of another state,
330 conviction or acquittal under federal law or the law of another state for the same act is a bar to
331 prosecution in this state.

332 (9) In any prosecution for a violation of this chapter, evidence or proof which shows a
333 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
334 substance or substances, is prima facie evidence that the person or persons did so with
335 knowledge of the character of the substance or substances.

336 (10) This section does not prohibit a veterinarian, in good faith and in the course of his
337 professional practice only and not for humans, from prescribing, dispensing, or administering

338 controlled substances or from causing the substances to be administered by an assistant or
339 orderly under his direction and supervision.

340 (11) Civil or criminal liability may not be imposed under this section on:

341 (a) any person registered under this chapter who manufactures, distributes, or possesses
342 an imitation controlled substance for use as a placebo or investigational new drug by a
343 registered practitioner in the ordinary course of professional practice or research; or

344 (b) any law enforcement officer acting in the course and legitimate scope of his
345 employment.

346 (12) (a) Civil or criminal liability may not be imposed under this section on any Indian,
347 as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for bona fide
348 traditional ceremonial purposes in connection with the practice of a traditional Indian religion
349 as defined in Subsection 58-37-2(1)(w).

350 (b) In a prosecution alleging violation of this section regarding peyote as defined in
351 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,
352 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in
353 connection with the practice of a traditional Indian religion.

354 (c) (i) The defendant shall provide written notice of intent to claim an affirmative
355 defense under this Subsection (12) as soon as practicable, but not later than ten days prior to
356 trial.

357 (ii) The notice shall include the specific claims of the affirmative defense.

358 (iii) The court may waive the notice requirement in the interest of justice for good
359 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

360 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
361 a preponderance of the evidence. If the defense is established, it is a complete defense to the
362 charges.

363 (13) If any provision of this chapter, or the application of any provision to any person
364 or circumstances, is held invalid, the remainder of this chapter shall be given effect without the
365 invalid provision or application.

366 Section 4. Section **76-5-207** is amended to read:

367 **76-5-207. Automobile homicide.**

368 (1) As used in this section:

- 369 (a) "Drug" or "drugs" means:
- 370 (i) a controlled substance as defined in Section 58-37-2;
- 371 (ii) a drug as defined in Section 58-17b-102; or
- 372 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the
- 373 human body, can impair the ability of a person to safely operate a motor vehicle.
- 374 (b) "Motor vehicle" means any self-propelled vehicle and includes any automobile,
- 375 truck, van, motorcycle, train, engine, watercraft, or aircraft.
- 376 (2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person
- 377 operates a motor vehicle in a negligent manner causing the death of another and:
- 378 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the
- 379 person has a blood or breath alcohol concentration of .08 grams or greater at the time of the
- 380 test;
- 381 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
- 382 and any drug to a degree that renders the person incapable of safely operating a vehicle; or
- 383 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
- 384 operation.
- 385 (b) A conviction for a violation of this Subsection (2) is a second degree felony if it is
- 386 subsequent to a conviction as defined in Subsection 41-6a-501(2).
- 387 (c) As used in this Subsection (2), "negligent" means simple negligence, the failure to
- 388 exercise that degree of care that reasonable and prudent persons exercise under like or similar
- 389 circumstances.
- 390 (3) (a) Criminal homicide is automobile homicide, a second degree felony, if the
- 391 person operates a motor vehicle in a criminally negligent manner causing the death of another
- 392 and:
- 393 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the
- 394 person has a blood or breath alcohol concentration of .08 grams or greater at the time of the
- 395 test;
- 396 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
- 397 and any drug to a degree that renders the person incapable of safely operating a vehicle; or
- 398 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
- 399 operation.

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

402 (4) The standards for chemical breath analysis as provided by Section 41-6a-515 and
403 the provisions for the admissibility of chemical test results as provided by Section 41-6a-516
404 apply to determination and proof of blood alcohol content under this section.

405 (5) Calculations of blood or breath alcohol concentration under this section shall be
406 made in accordance with Subsection 41-6a-502(1).

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

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

411 (8) A person is guilty of a separate offense for each victim suffering bodily injury or
412 serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a
413 result of the person's violation of this section whether or not the injuries arise from the same
414 episode of driving.

415 Section 5. Section **78A-7-118** is amended to read:

416 **78A-7-118. Appeals from justice court -- Trial or hearing de novo in district**
417 **court.**

418 (1) In a criminal case, a defendant is entitled to a trial de novo in the district court only
419 if the defendant files a notice of appeal within 30 days of:

420 (a) sentencing after a bench or jury trial, or a plea of guilty in the justice court resulting
421 in a finding or verdict of guilt; or

422 (b) a plea of guilty in the justice court that is held in abeyance.

423 (2) If an appeal under Subsection (1) is of a plea entered pursuant to negotiation with
424 the prosecutor, and the defendant did not reserve the right to appeal as part of the plea
425 negotiation, the negotiation is voided by the appeal.

426 (3) A defendant convicted and sentenced in justice court is entitled to a hearing de
427 novo in the district court on the following matters, if he files a notice of appeal within 30 days
428 of:

429 (a) an order revoking probation;

430 (b) an order entering a judgment of guilt pursuant to the person's failure to fulfil the

431 terms of a plea in abeyance agreement;
432 (c) a sentence entered pursuant to Subsection (3)(b); or
433 (d) an order denying a motion to withdraw a plea.
434 (4) The prosecutor is entitled to a hearing de novo in the district court on:
435 (a) a final judgment of dismissal;
436 (b) an order arresting judgment;
437 (c) an order terminating the prosecution because of a finding of double jeopardy or
438 denial of a speedy trial;
439 (d) a judgment holding invalid any part of a statute or ordinance;
440 (e) a pretrial order excluding evidence, when the prosecutor certifies that exclusion of
441 that evidence [~~prevents~~] impairs continued prosecution; or
442 (f) an order granting a motion to withdraw a plea of guilty or no contest.
443 (5) Upon entering a decision in a hearing de novo, the district court shall remand the
444 case to the justice court unless:
445 (a) the decision results in immediate dismissal of the case;
446 (b) with agreement of the parties, the district court consents to retain jurisdiction; or
447 (c) the defendant enters a plea of guilty in the district court.
448 (6) The district court shall retain jurisdiction over the case on trial de novo.
449 (7) The decision of the district court is final and may not be appealed unless the district
450 court rules on the constitutionality of a statute or ordinance.

Legislative Review Note
as of 1-13-09 1:31 PM

Office of Legislative Research and General Counsel

S.B. 116 - Criminal Penalty and Prosecution Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will require \$9,200 for increased court costs. Fine revenue would also increase and should be more than court costs.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$9,200	\$9,200	\$0	\$0	\$0
Total	\$0	\$9,200	\$9,200	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals or businesses. Local governments (Justice Courts) will be have increased costs and off-setting fine revenues.
