

Senator Scott K. Jenkins proposes the following substitute bill:

ALCOHOL OR DRUG RELATED OFFENSE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: Rebecca P. Edwards

LONG TITLE

General Description:

This bill modifies provisions relating to the driver license suspension period and other sentencing requirements for certain alcohol or drug related offenses.

Highlighted Provisions:

This bill:

- ▶ amends the administrative suspension periods for certain alcohol related offenses;
- ▶ amends the driver license suspension period for a person convicted of certain alcohol or drug related offenses;
- ▶ provides that a court may shorten a person's driver license suspension period for certain alcohol or drug related offenses prior to the completion of the suspension period if the person completes certain requirements; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:



- 26 **41-6a-509**, as last amended by Laws of Utah 2009, Chapters 201 and 390
- 27 **41-6a-517**, as last amended by Laws of Utah 2009, Chapter 390
- 28 **41-6a-521**, as last amended by Laws of Utah 2009, Chapters 40 and 390
- 29 **53-3-223**, as last amended by Laws of Utah 2009, Chapters 40, 201, and 390
- 30 **53-3-231 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 276



31
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **41-6a-509** is amended to read:

34 **41-6a-509. Driver license suspension or revocation for a driving under the**
35 **influence violation.**

36 (1) ~~[(a)]~~ The Driver License Division shall~~[-(i)]~~, if the person is 21 years of age or
37 older at the time of arrest:

38 ~~[(A)]~~ (a) suspend for a period of 120 days the operator's license of a person convicted
39 for the first time under Section 41-6a-502 of an offense committed on or after July 1, 2009;

40 ~~[and]~~ or

41 ~~[(B)]~~ (b) revoke for a period of two years the license of a person if:

42 ~~[(i)]~~ (i) the person has a prior conviction as defined under Subsection 41-6a-501(2);

43 and

44 ~~[(ii)]~~ (ii) the current driving under the influence violation under Section 41-6a-502 is
45 committed:

46 ~~[(Aa)]~~ (A) within a period of 10 years from the date of the prior violation; and

47 ~~[(Bb)]~~ (B) on or after July 1, 2009~~[-];~~

48 (2) The Driver License Division shall, if the person is 19 years of age or older but
49 under 21 years of age at the time of arrest:

50 (a) suspend the person's driver license until the person is 21 years of age or for a period
51 of one year, whichever is longer, if the person is convicted for the first time of a driving under
52 the influence violation under Section 41-6a-502 of an offense that was committed on or after
53 July 1, 2011;

54 (b) deny the person's application for a license or learner's permit until the person is 21
55 years of age or for a period of one year, whichever is longer, if the person:

56 (i) is convicted for the first time of a driving under the influence violation under

57 Section 41-6a-502 of an offense committed on or after July 1, 2011; and

58 (ii) has not been issued an operator license;

59 (c) revoke the person's driver license until the person is 21 years of age or for a period
60 of two years, whichever is longer, if:

61 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

62 (ii) the current driving under the influence violation under Section 41-6a-502 is
63 committed on or after July 1, 2009, and within a period of 10 years from the date of the prior
64 violation; or

65 (d) deny the person's application for a license or learner's permit until the person is 21
66 years of age or for a period of two years, whichever is longer, if:

67 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2);

68 (ii) the current driving under the influence violation under Section 41-6a-502 is
69 committed on or after July 1, 2009, and within a period of 10 years from the date of the prior
70 violation; and

71 (iii) the person has not been issued an operator license.

72 ~~[(ii)]~~ (3) The Driver License Division shall, if the person is under [21] 19 years of age
73 at the time of arrest:

74 ~~[(A)]~~ (a) suspend the person's driver license until the person is 21 years of age [or for a
75 period of 120 days, whichever is longer,] if the person is convicted for the first time of a
76 driving under the influence violation under Section 41-6a-502 of an offense that was
77 committed on or after July 1, 2009;

78 ~~[(B)]~~ (b) deny the person's application for a license or learner's permit until the person
79 is 21 years of age [or for a period of 120 days, whichever is longer,] if the person:

80 ~~[(F)]~~ (i) is convicted for the first time of a driving under the influence violation under
81 Section 41-6a-502 of an offense committed on or after July 1, 2009; and

82 ~~[(H)]~~ (ii) has not been issued an operator license;

83 ~~[(C)]~~ (c) revoke the person's driver license until the person is 21 years of age [or for a
84 period of two years, whichever is longer,] if:

85 ~~[(F)]~~ (i) the person has a prior conviction as defined under Subsection 41-6a-501(2);
86 and

87 ~~[(H)]~~ (ii) the current driving under the influence violation under Section 41-6a-502 is

88 committed[:(Aa)] on or after July 1, 2009, and within a period of 10 years from the date of the
 89 prior violation; [~~and~~] or

90 [~~(Bb)~~] on or after July 1, 2009; or

91 [~~(D)~~] (d) deny the person's application for a license or learner's permit until the person
 92 is 21 years of age [~~or for a period of two years, whichever is longer,~~] if:

93 [~~(F)~~] (i) the person has a prior conviction as defined under Subsection 41-6a-501(2);

94 [~~(H)~~] (ii) the current driving under the influence violation under Section 41-6a-502 is
 95 committed[:(Aa)] on or after July 1, 2009, and within a period of 10 years from the date of the
 96 prior violation; and

97 [~~(Bb)~~] on or after July 1, 2009; and

98 [~~(H)~~] (iii) the person has not been issued an operator license[; ~~and~~].

99 [~~(iii)~~] ~~H~~→ ~~(3)~~ (4) ←~~H~~ The Driver License Division shall suspend or revoke the
 99a license of a person

100 as ordered by the court under Subsection [~~(2)~~] ~~H~~→ ~~(9)~~ (10) ←~~H~~ .

101 [~~(b)~~] ~~H~~→ ~~(4)~~ (5) ←~~H~~ The Driver License Division shall:

102 (a) deny, suspend, or revoke the operator's license of a person convicted under Section
 103 41-6a-502 of an offense that was committed prior to July 1, 2009, for the denial, suspension, or
 104 revocation periods in effect prior to July 1, 2009[; ~~or~~]

105 (b) deny, suspend, or revoke the operator's license of a person for the denial,
 106 suspension, or revocation periods in effect from July 1, 2009, through June 30, 2011, if:

107 (i) the person was 20 years of age or older but under 21 years of age at the time of
 108 arrest; and

109 (ii) the conviction under Section 41-6a-502 is for an offense that was committed on or
 110 after July 1, 2009, and prior to July 1, 2011.

111 [~~(c)~~] ~~H~~→ ~~(5)~~ (6) ←~~H~~ The Driver License Division shall subtract from any suspension
 111a or revocation

112 period the number of days for which a license was previously suspended under Section
 113 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon
 114 which the record of conviction is based.

115 [~~(d)~~] ~~H~~→ ~~(6)~~ (7) ←~~H~~ If a conviction recorded as impaired driving is amended to a
 115a driving under the

116 influence conviction under Section 41-6a-502 in accordance with Subsection
 117 41-6a-502.5(3)(a)(ii), the Driver License Division:

118 [~~(i)~~] (a) may not subtract from any suspension or revocation any time for which a

119 license was previously suspended or revoked under Section 53-3-223 or 53-3-231; and
 120 ~~[(†)]~~ (b) shall start the suspension or revocation time under Subsection (1)~~[(a)]~~ on the
 121 date of the amended conviction.

122 ~~H→ [(7)] (8) ←H~~ A court that reported a conviction of a violation of Section 41-6a-502 for a
 123 violation that occurred on or after July 1, 2009, to the Driver License Division may shorten the
 124 suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b) prior to
 125 completion of the suspension period if the person:

126 (a) (i) for a suspension imposed under Subsection (2)(a) or (b), completes at least six
 127 months of the license suspension; or

128 (ii) for a license suspension imposed under Subsection (3)(a) or (b), completes at least
 129 two years of the license suspension;

130 (b) completes a screening;

131 (c) completes an assessment, if it is found appropriate by a screening under Subsection

132 ~~H→ [(7)] (8) ←H~~ (b);

133 (d) completes substance abuse treatment if it is found appropriate by the assessment
 134 under Subsection ~~H→ [(7)] (8) ←H~~ (c);

135 (e) completes an educational series if substance abuse treatment is not required by an
 136 assessment under Subsection ~~H→ [(7)] (8) ←H~~ (c) or the court does not order substance
 136a abuse treatment;

137 (f) has not been convicted of a violation of any motor vehicle law in which the person
 138 was involved as the operator of the vehicle during the suspension period imposed under
 139 Subsection (2)(a) or (b) or Subsection (3)(a) or (b);

140 (g) has complied with all the terms of the person's probation or all orders of the court if
 141 not ordered to probation; and

142 (h) (i) is 18 years of age or older and provides a sworn statement to the court that the
 143 person has not ~~S→ unlawfully ←S~~ consumed alcohol ~~S→ [in violation of Section 32B-4-409] ←S~~
 143a during the suspension

144 period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b); or

145 (ii) is under 18 years of age and has the person's parent or legal guardian provide an
 146 affidavit or sworn statement to the court certifying that to the parent or legal guardian's
 147 knowledge the person has not ~~S→ unlawfully ←S~~ consumed alcohol ~~S→ [in violation of Section~~
 147a ~~32B-4-409] ←S~~ during the
 148 suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b).

149 ~~H→ [(8)] (9) ←H~~ If the court shortens a person's license suspension period in accordance
 149a with the

150 requirements of Subsection ~~H~~→ ~~(7)~~ (8) ←~~H~~ , the court shall forward the order shortening
 150a the person's

151 suspension period prior to the completion of the suspension period imposed under Subsection
 152 (2)(a) or (b) or Subsection (3)(a) or (b) to the Driver License Division.

153 ~~(2)~~ ~~H~~→ ~~(9)~~ (10) ←~~H~~ (a) (i) In addition to any other penalties provided in this section,
 153a a court may

154 order the operator's license of a person who is convicted of a violation of Section 41-6a-502 to
 155 be suspended or revoked for an additional period of 90 days, 120 days, 180 days, one year, or
 156 two years to remove from the highways those persons who have shown they are safety hazards.

157 (ii) The additional suspension or revocation period provided in this Subsection ~~(2)~~
 157a ~~H~~→ ~~(9)~~ (10) ←~~H~~

158 shall begin the date on which the individual would be eligible to reinstate the individual's
 159 driving privilege for a violation of Section 41-6a-502.

160 (b) If the court suspends or revokes the person's license under this Subsection ~~(2)~~
 160a ~~H~~→ ~~(9)~~ (10) ←~~H~~ ,

161 the court shall prepare and send to the Driver License Division an order to suspend or revoke
 162 that person's driving privileges for a specified period of time.

163 ~~(3)~~ ~~H~~→ ~~(10)~~ (11) ←~~H~~ (a) The court shall notify the Driver License Division if a
 163a person fails to:

164 (i) complete all court ordered:

165 (A) screening;

166 (B) assessment;

167 (C) educational series;

168 (D) substance abuse treatment; and

169 (E) hours of work in a compensatory-service work program; or

170 (ii) pay all fines and fees, including fees for restitution and treatment costs.

171 (b) Upon receiving the notification described in Subsection ~~(3)~~ ~~H~~→ ~~(10)~~ (11) ←~~H~~ (a),
 171a the division

172 shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and
 173 (3).

174 Section 2. Section **41-6a-517** is amended to read:

175 **41-6a-517. Definitions -- Driving with any measurable controlled substance in the**
 176 **body -- Penalties -- Arrest without warrant.**

177 (1) As used in this section:

178 (a) "Controlled substance" means any substance scheduled under Section 58-37-4.

179 (b) "Practitioner" has the same meaning as provided in Section 58-37-2.

180 (c) "Prescribe" has the same meaning as provided in Section 58-37-2.

181 (d) "Prescription" has the same meaning as provided in Section 58-37-2.

182 (2) In cases not amounting to a violation of Section 41-6a-502, a person may not
183 operate or be in actual physical control of a motor vehicle within this state if the person has any
184 measurable controlled substance or metabolite of a controlled substance in the person's body.

185 (3) It is an affirmative defense to prosecution under this section that the controlled
186 substance was:

- 187 (a) involuntarily ingested by the accused;
- 188 (b) prescribed by a practitioner for use by the accused; or
- 189 (c) otherwise legally ingested.

190 (4) (a) A person convicted of a violation of Subsection (2) is guilty of a class B
191 misdemeanor.

192 (b) A person who violates this section is subject to conviction and sentencing under
193 both this section and any applicable offense under Section 58-37-8.

194 (5) A peace officer may, without a warrant, arrest a person for a violation of this
195 section when the officer has probable cause to believe the violation has occurred, although not
196 in the officer's presence, and if the officer has probable cause to believe that the violation was
197 committed by the person.

198 (6) The Driver License Division shall~~[(a)]~~, if the person is 21 years of age or older on
199 the date of arrest:

200 ~~[(i)]~~ (a) suspend, for a period of 120 days, the driver license of a person convicted
201 under Subsection (2) of an offense committed on or after July 1, 2009; or

202 ~~[(ii)]~~ (b) revoke, for a period of two years, the driver license of a person if:

203 ~~[(A)]~~ (i) the person has a prior conviction as defined under Subsection 41-6a-501(2);
204 and

205 ~~[(B)]~~ (ii) the current violation under Subsection (2) is committed~~[(i)]~~ on or after July
206 1, 2009, and within a period of 10 years after the date of the prior violation~~[(i)]~~.

207 ~~[(ii)]~~ on or after July 1, 2009;

208 (7) The Driver License Division shall, if the person is 19 years of age or older but
209 under 21 years of age on the date of arrest:

210 (a) suspend, until the person is 21 years of age or for a period of one year, whichever is
211 longer, the driver license of a person convicted under Subsection (2) of an offense committed

212 on or after July 1, 2011; or

213 (b) revoke, until the person is 21 years of age or for a period of two years, whichever is
214 longer, the driver license of a person if:

215 (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and

216 (ii) the current violation under Subsection (2) is committed on or after July 1, 2009,
217 and within a period of 10 years after the date of the prior violation.

218 ~~[(b)]~~ (8) The Driver License Division shall, if the person is under ~~[21]~~ 19 years of age
219 on the date of arrest:

220 ~~[(i)]~~ (a) suspend, until the person is 21 years of age ~~[or for a period of 120 days]~~, the
221 driver license of a person convicted under Subsection (2) of an offense committed on or after
222 July 1, 2009; or

223 ~~[(ii)]~~ (b) revoke, until the person is 21 years of age ~~[or for a period of two years]~~, the
224 driver license of a person if:

225 ~~[(A)]~~ (i) the person has a prior conviction as defined under Subsection 41-6a-501(2);
226 and

227 ~~[(B)]~~ (ii) the current violation under Subsection (2) is committed ~~[-(F)]~~ on or after July
228 1, 2009, and within a period of 10 years after the date of the prior violation ~~[-and]~~.

229 ~~[(H)]~~ on or after July 1, 2009;

230 ~~[(c)]~~ (9) The Driver License Division shall subtract from any suspension or revocation
231 period the number of days for which a license was previously suspended under Section
232 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon
233 which the record of conviction is based ~~[-and]~~.

234 (10) The Driver License Division shall:

235 ~~[(d)]~~ (a) deny, suspend, or revoke a person's license for the denial and suspension
236 periods in effect prior to July 1, 2009, for a conviction of a violation under Subsection (2) that
237 was committed prior to July 1, 2009 ~~[-]; or~~

238 (b) deny, suspend, or revoke the operator's license of a person for the denial,
239 suspension, or revocation periods in effect from July 1, 2009, through June 30, 2011, if:

240 (i) the person was 20 years of age or older but under 21 years of age at the time of
241 arrest; and

242 (ii) the conviction under Subsection (2) is for an offense that was committed on or after

243 July 1, 2009, and prior to July 1, 2011.

244 (11) A court that reported a conviction of a violation of this section for a violation that
 245 occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension
 246 period imposed under Subsection (7)(a) or (8)(a) prior to completion of the suspension period
 247 if the person:

248 (a) (i) for a license suspension imposed under Subsection (7)(a), completes at least six
 249 months of the license suspension; or

250 (ii) for a license suspension imposed under Subsection (8)(a), completes at least two
 251 years of the license suspension;

252 (b) completes a screening;

253 (c) completes an assessment, if it is found appropriate by a screening under Subsection
 254 (11)(b);

255 (d) completes substance abuse treatment if it is found appropriate by the assessment
 256 under Subsection (11)(c);

257 (e) completes an educational series if substance abuse treatment is not required by the
 258 assessment under Subsection (11)(c) or the court does not order substance abuse treatment;

259 (f) has not been convicted of a violation of any motor vehicle law in which the person
 260 was involved as the operator of the vehicle during the suspension period imposed under
 261 Subsection (7)(a) or (8)(a)(i);

262 (g) has complied with all the terms of the person's probation or all orders of the court if
 263 not ordered to probation; and

264 (h) (i) is 18 years of age or older and provides a sworn statement to the court that the
 265 person has not consumed a controlled substance not prescribed by a practitioner for use by the

266 person or ~~§~~ **unlawfully consumed** ~~←§~~ alcohol ~~§~~ **[in violation of Section 32B-4-409]** ~~←§~~ during
 266a the suspension period imposed

267 under Subsection (7)(a) or (8)(a); or

268 (ii) is under 18 years of age and has the person's parent or legal guardian provide an
 269 affidavit or other sworn statement to the court certifying that to the parent or legal guardian's
 270 knowledge the person has not consumed a controlled substance not prescribed by a practitioner

271 for use by the person or ~~§~~ **unlawfully consumed** ~~←§~~ alcohol ~~§~~ **[in violation of Section**
 271a ~~32B-4-409]~~ ~~←§~~ during the suspension period

272 imposed under Subsection (7)(a) or (8)(a).

273 (12) If the court shortens a person's license suspension period in accordance with the

274 requirements of Subsection (11), the court shall forward the order shortening the person's
 275 license suspension period prior to the completion of the suspension period imposed under
 276 Subsection (7)(a) or (8)(a) to the Driver License Division.

277 ~~[(7)]~~ (13) (a) The court shall notify the Driver License Division if a person fails to:

278 (i) complete all court ordered screening and assessment, educational series, and
 279 substance abuse treatment; or

280 (ii) pay all fines and fees, including fees for restitution and treatment costs.

281 (b) Upon receiving the notification, the division shall suspend the person's driving
 282 privilege in accordance with Subsections 53-3-221(2) and (3).

283 ~~[(8)]~~ (14) The court shall order supervised probation in accordance with Section
 284 41-6a-507 for a person convicted under Subsection (2).

285 Section 3. Section **41-6a-521** is amended to read:

286 **41-6a-521. Revocation hearing for refusal -- Appeal.**

287 (1) (a) A person who has been notified of the Driver License Division's intention to
 288 revoke the person's license under Section 41-6a-520 is entitled to a hearing.

289 (b) A request for the hearing shall be made in writing within 10 calendar days after the
 290 day on which notice is provided.

291 (c) Upon request in a manner specified by the Driver License Division, the Driver
 292 License Division shall grant to the person an opportunity to be heard within 29 days after the
 293 date of arrest.

294 (d) If the person does not make a request for a hearing before the Driver License
 295 Division under this Subsection (1), the person's privilege to operate a motor vehicle in the state
 296 is revoked beginning on the 30th day after the date of arrest:

297 (i) for a person 21 years of age or older on the date of arrest, for a period of:

298 (A) ~~§~~ → [f] **18 months** [~~two years if the arrest was made on or after July 1, 2011~~] ← ~~§~~ , unless
 299 Subsection (1)(d)(i)(B) applies; or

300 (B) 36 months, if the arrest was made on or after July 1, 2009, and the person has had a
 301 previous:

302 (I) license sanction for an offense that occurred within the previous 10 years from the
 303 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
 304 53-3-232; or

305 (II) conviction for an offense that occurred within the previous 10 years from the date
306 of arrest under Section 41-6a-502 or a statute previously in effect in this state that would
307 constitute a violation of Section 41-6a-502;

308 (ii) for a person under 21 years of age on the date of arrest:

309 (A) until the person is 21 years of age or for a period of [~~18 months~~] two years,
310 whichever is longer, if the arrest was made on or after July 1, [~~2009~~] 2011, unless Subsection
311 (1)(d)(ii)(B) applies; or

312 (B) until the person is 21 years of age or for a period of 36 months, whichever is
313 longer, if the arrest was made on or after July 1, 2009, and the person has had a previous:

314 (I) license sanction for an offense that occurred within the previous 10 years from the
315 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
316 53-3-232; or

317 (II) conviction for an offense that occurred within the previous 10 years from the date
318 of arrest under Section 41-6a-502 or a statute previously in effect in this state that would
319 constitute a violation of Section 41-6a-502; or

320 (iii) for a person that was arrested prior to July 1, 2009, for the suspension periods in
321 effect prior to July 1, 2009.

322 (2) (a) Except as provided in Subsection (2)(b), if a hearing is requested by the person,
323 the hearing shall be conducted by the Driver License Division in:

324 (i) the county in which the offense occurred; or

325 (ii) a county which is adjacent to the county in which the offense occurred.

326 (b) The Driver License Division may hold a hearing in some other county if the Driver
327 License Division and the person both agree.

328 (3) The hearing shall be documented and shall cover the issues of:

329 (a) whether a peace officer had reasonable grounds to believe that a person was
330 operating a motor vehicle in violation of Section 41-6a-502, 41-6a-517, 41-6a-530, 53-3-231,
331 or 53-3-232; and

332 (b) whether the person refused to submit to the test or tests under Section 41-6a-520.

333 (4) (a) In connection with the hearing, the division or its authorized agent:

334 (i) may administer oaths and may issue subpoenas for the attendance of witnesses and
335 the production of relevant books and papers; and

336 (ii) shall issue subpoenas for the attendance of necessary peace officers.

337 (b) The Driver License Division shall pay witness fees and mileage from the
338 Transportation Fund in accordance with the rates established in Section 78B-1-119.

339 (5) (a) If after a hearing, the Driver License Division determines that the person was
340 requested to submit to a chemical test or tests and refused to submit to the test or tests, or if the
341 person fails to appear before the Driver License Division as required in the notice, the Driver
342 License Division shall revoke the person's license or permit to operate a motor vehicle in Utah
343 beginning on the date the hearing is held:

344 (i) for a person 21 years of age or older on the date of arrest, for a period of:

345 (A) ~~H~~→ [f] 18 months [f] [~~two years if the arrest was made on or after July 1, 2011,~~
345a ~~and~~] ←~~H~~ unless

346 Subsection (5)(a)(i)(B) applies; or

347 (B) 36 months, if the arrest was made on or after July 1, 2009, and the person has had a
348 previous:

349 (I) license sanction for an offense that occurred within the previous 10 years from the
350 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
351 53-3-232; or

352 (II) conviction for an offense that occurred within the previous 10 years from the date
353 of arrest under Section 41-6a-502 or a statute previously in effect in this state that would
354 constitute a violation of Section 41-6a-502;

355 (ii) for a person under 21 years of age on the date of arrest:

356 (A) until the person is 21 years of age or for a period of [~~18 months~~] two years,
357 whichever is longer, for an arrest that was made on or after July 1, [~~2009~~] 2011, and unless
358 Subsection (5)(a)(ii)(B) applies; or

359 (B) until the person is 21 years of age or for a period of 36 months, whichever is
360 longer, if the arrest was made on or after July 1, 2009, and the person has had a previous:

361 (I) license sanction for an offense that occurred within the previous 10 years from the
362 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
363 53-3-232; or

364 (II) conviction for an offense that occurred within the previous 10 years from the date
365 of arrest under Section 41-6a-502 or a statute previously in effect in this state that would
366 constitute a violation of Section 41-6a-502; or

367 (iii) for a person that was arrested prior to July 1, 2009, for the revocation periods in
368 effect prior to July 1, 2009.

369 (b) The Driver License Division shall also assess against the person, in addition to any
370 fee imposed under Subsection 53-3-205(12), a fee under Section 53-3-105, which shall be paid
371 before the person's driving privilege is reinstated, to cover administrative costs.

372 (c) The fee shall be cancelled if the person obtains an unappealed court decision
373 following a proceeding allowed under Subsection (2) that the revocation was improper.

374 (6) (a) Any person whose license has been revoked by the Driver License Division
375 under this section following an administrative hearing may seek judicial review.

376 (b) Judicial review of an informal adjudicative proceeding is a trial.

377 (c) Venue is in the district court in the county in which the offense occurred.

378 Section 4. Section **53-3-223** is amended to read:

379 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
380 **Hearing and decision -- Suspension and fee -- Judicial review.**

381 (1) (a) If a peace officer has reasonable grounds to believe that a person may be
382 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a
383 certain blood or breath alcohol concentration and driving under the influence of any drug,
384 alcohol, or combination of a drug and alcohol or while having any measurable controlled
385 substance or metabolite of a controlled substance in the person's body in violation of Section
386 41-6a-517, the peace officer may, in connection with arresting the person, request that the
387 person submit to a chemical test or tests to be administered in compliance with the standards
388 under Section 41-6a-520.

389 (b) In this section, a reference to Section 41-6a-502 includes any similar local
390 ordinance adopted in compliance with Subsection 41-6a-510(1).

391 (2) The peace officer shall advise a person prior to the person's submission to a
392 chemical test that a test result indicating a violation of Section 41-6a-502 or 41-6a-517 shall,
393 and the existence of a blood alcohol content sufficient to render the person incapable of safely
394 driving a motor vehicle may, result in suspension or revocation of the person's license to drive
395 a motor vehicle.

396 (3) If the person submits to a chemical test and the test results indicate a blood or
397 breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer

398 makes a determination, based on reasonable grounds, that the person is otherwise in violation
399 of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of
400 arrest, give notice of the division's intention to suspend the person's license to drive a motor
401 vehicle.

402 (4) (a) When a peace officer gives notice on behalf of the division, the peace officer
403 shall:

404 (i) take the Utah license certificate or permit, if any, of the driver;

405 (ii) issue a temporary license certificate effective for only 29 days from the date of
406 arrest; and

407 (iii) supply to the driver, in a manner specified by the division, basic information
408 regarding how to obtain a prompt hearing before the division.

409 (b) A citation issued by a peace officer may, if provided in a manner specified by the
410 division, also serve as the temporary license certificate.

411 (5) As a matter of procedure, a peace officer shall send to the division within 10
412 calendar days after the day on which notice is provided:

413 (a) the person's license certificate;

414 (b) a copy of the citation issued for the offense;

415 (c) a signed report in a manner specified by the division indicating the chemical test
416 results, if any; and

417 (d) any other basis for the peace officer's determination that the person has violated
418 Section 41-6a-502 or 41-6a-517.

419 (6) (a) Upon request in a manner specified by the division, the division shall grant to
420 the person an opportunity to be heard within 29 days after the date of arrest. The request to be
421 heard shall be made within 10 calendar days of the day on which notice is provided under
422 Subsection (5).

423 (b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the
424 division in:

425 (A) the county in which the arrest occurred; or

426 (B) a county that is adjacent to the county in which the arrest occurred.

427 (ii) The division may hold a hearing in some other county if the division and the person
428 both agree.

- 429 (c) The hearing shall be documented and shall cover the issues of:
- 430 (i) whether a peace officer had reasonable grounds to believe the person was driving a
- 431 motor vehicle in violation of Section 41-6a-502 or 41-6a-517;
- 432 (ii) whether the person refused to submit to the test; and
- 433 (iii) the test results, if any.
- 434 (d) (i) In connection with a hearing the division or its authorized agent:
- 435 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and
- 436 the production of relevant books and papers; or
- 437 (B) may issue subpoenas for the attendance of necessary peace officers.
- 438 (ii) The division shall pay witness fees and mileage from the Transportation Fund in
- 439 accordance with the rates established in Section 78B-1-119.
- 440 (e) The division may designate one or more employees to conduct the hearing.
- 441 (f) Any decision made after a hearing before any designated employee is as valid as if
- 442 made by the division.
- 443 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable
- 444 grounds to believe that the person was driving a motor vehicle in violation of Section
- 445 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the
- 446 notice, or if a hearing is not requested under this section, the division shall:
- 447 (i) if the person is 21 years of age or older at the time of arrest and the arrest was made
- 448 on or after July 1, 2009, suspend the person's license or permit to operate a motor vehicle for a
- 449 period of:
- 450 (A) 120 days beginning on the 30th day after the date of arrest for a first suspension; or
- 451 (B) two years beginning on the 30th day after the date of arrest for a second or
- 452 subsequent suspension for an offense that occurred within the previous 10 years; [~~or~~]
- 453 (ii) if the person is 19 years of age or older but under 21 years of age at the time of
- 454 arrest and the arrest was made on or after July 1, 2011:
- 455 (A) suspend the person's license or permit to operate a motor vehicle:
- 456 (I) for a period of six months, beginning on the 30th day after the date of arrest for a
- 457 first suspension; or
- 458 (II) until the person is 21 years of age or for a period of two years, whichever is longer,
- 459 beginning on the 30th day after the date of arrest for a second or subsequent suspension for an

460 offense that occurred within the previous 10 years; or
461 (B) deny the person's application for a license or learner's permit:
462 (I) for a period of six months for a first suspension, if the person has not been issued an
463 operator license; or
464 (II) until the person is 21 years of age or for a period of two years, whichever is longer,
465 beginning on the 30th day after the date of arrest for a second or subsequent suspension for an
466 offense that occurred within the previous 10 years; or
467 [(ii)] (iii) if the person is under [21] 19 years of age at the time of arrest and the arrest
468 was made on or after July 1, 2009:
469 (A) suspend the person's license or permit to operate a motor vehicle:
470 (I) [until the person is 21 years of age or for a period of 120 days, whichever is longer,]
471 for a period of two years beginning on the 30th day after the date of arrest for a first
472 suspension; or
473 (II) until the person is 21 years of age or for a period of two years, whichever is longer,
474 beginning on the 30th day after the date of arrest for a second or subsequent suspension for an
475 offense that occurred within the previous 10 years; or
476 (B) deny the person's application for a license or learner's permit:
477 (I) [until the person is 21 years of age or for a period of 120 days, whichever is longer,]
478 for a period of two years for a first suspension, if the person has not been issued an operator
479 license; or
480 (II) until the person is 21 years of age or for a period of two years, whichever is longer,
481 beginning on the 30th day after the date of arrest for a second or subsequent suspension for an
482 offense that occurred within the previous 10 years.
483 (b) The division shall deny or suspend a person's license for the denial and suspension
484 periods in effect:
485 (i) prior to July 1, 2009, for an offense that was committed prior to July 1, 2009[-]; or
486 (ii) from July 1, 2009, through June 30, 2011, if:
487 (A) the person was 20 years 6 months of age or older but under 21 years of age at the
488 time of arrest; and
489 (B) the conviction under Subsection (2) is for an offense that was committed on or
490 after July 1, 2009, and prior to July 1, 2011.

491 (c) (i) Notwithstanding the provisions in Subsection (7)(a)(i)(A), the division shall
492 reinstate a person's license prior to completion of the 120 day suspension period imposed under
493 Subsection (7)(a)(i)(A):

494 (A) immediately upon receiving written verification of the person's dismissal of a
495 charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received
496 prior to completion of the suspension period; or

497 (B) no sooner than 60 days beginning on the 30th day after the date of arrest upon
498 receiving written verification of the person's reduction of a charge for a violation of Section
499 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the
500 suspension period.

501 (ii) Notwithstanding the provisions in Subsection (7)(a)(i)(A) or (7)(b)(~~†~~), the
502 division shall reinstate a person's license prior to completion of the [90] 120-day suspension
503 period imposed under Subsection (7)(a)(i)(A) immediately upon receiving written verification
504 of the person's conviction of impaired driving under Section 41-6a-502.5 if:

505 (A) the written verification is received prior to completion of the suspension period;
506 and

507 (B) the reporting court notifies the Driver License Division that the defendant is
508 participating in or has successfully completed the program of a driving under the influence
509 court as defined in Section 41-6a-501.

510 (iii) If a person's license is reinstated under this Subsection (7)(c), the person is
511 required to pay the license reinstatement fees under Subsections 53-3-105(23) and (24).

512 (iv) The driver license reinstatements authorized under this Subsection (7)(c) only
513 apply to a 120 day suspension period imposed under Subsection (7)(a)(i)(A).

514 (8) (a) The division shall assess against a person, in addition to any fee imposed under
515 Subsection 53-3-205(12) for driving under the influence, a fee under Section 53-3-105 to cover
516 administrative costs, which shall be paid before the person's driving privilege is reinstated.
517 This fee shall be cancelled if the person obtains an unappealed division hearing or court
518 decision that the suspension was not proper.

519 (b) A person whose license has been suspended by the division under this section
520 following an administrative hearing may file a petition within 30 days after the suspension for a
521 hearing on the matter which, if held, is governed by Section 53-3-224.

522 Section 5. Section 53-3-231 (Effective 07/01/11) is amended to read:

523 **53-3-231 (Effective 07/01/11). Person under 21 may not operate a vehicle or**
524 **motorboat with detectable alcohol in body -- Chemical test procedures -- Temporary**
525 **license -- Hearing and decision -- Suspension of license or operating privilege -- Fees --**
526 **Judicial review -- Referral to local substance abuse authority or program.**

527 (1) (a) As used in this section:

528 (i) "Local substance abuse authority" has the same meaning as provided in Section
529 62A-15-102.

530 (ii) "Substance abuse program" means any substance abuse program licensed by the
531 Department of Human Services or the Department of Health and approved by the local
532 substance abuse authority.

533 (b) Calculations of blood, breath, or urine alcohol concentration under this section shall
534 be made in accordance with the procedures in Subsection 41-6a-502(1).

535 (2) (a) A person younger than 21 years of age may not operate or be in actual physical
536 control of a vehicle or motorboat with any measurable blood, breath, or urine alcohol
537 concentration in the person's body as shown by a chemical test.

538 (b) A person who violates Subsection (2)(a), in addition to any other applicable
539 penalties arising out of the incident, shall have the person's operator license denied or
540 suspended as provided in Subsection (8).

541 (3) (a) When a peace officer has reasonable grounds to believe that a person may be
542 violating or has violated Subsection (2), the peace officer may, in connection with arresting the
543 person for a violation of Section 32B-4-409, request that the person submit to a chemical test
544 or tests to be administered in compliance with the standards under Section 41-6a-520.

545 (b) The peace officer shall advise a person prior to the person's submission to a
546 chemical test that a test result indicating a violation of Subsection (2)(a) will result in denial or
547 suspension of the person's license to operate a motor vehicle or a refusal to issue a license.

548 (c) If the person submits to a chemical test and the test results indicate a blood, breath,
549 or urine alcohol content in violation of Subsection (2)(a), or if a peace officer makes a
550 determination, based on reasonable grounds, that the person is otherwise in violation of
551 Subsection (2)(a), a peace officer shall, on behalf of the division and within 24 hours of the
552 arrest, give notice of the division's intention to deny or suspend the person's license to operate a

553 vehicle or refusal to issue a license under this section.

554 (4) When a peace officer gives notice on behalf of the division, the peace officer shall:

555 (a) take the Utah license certificate or permit, if any, of the operator;

556 (b) issue a temporary license certificate effective for only 29 days from the date of
557 arrest if the driver had a valid operator's license; and

558 (c) supply to the operator, in a manner specified by the division, basic information
559 regarding how to obtain a prompt hearing before the division.

560 (5) A citation issued by a peace officer may, if provided in a manner specified by the
561 division, also serve as the temporary license certificate under Subsection (4)(b).

562 (6) As a matter of procedure, a peace officer shall send to the division within 10
563 calendar days after the day on which notice is provided:

564 (a) the person's driver license certificate, if any;

565 (b) a copy of the citation issued for the offense;

566 (c) a signed report in a manner specified by the Driver License Division indicating the
567 chemical test results, if any; and

568 (d) any other basis for a peace officer's determination that the person has violated
569 Subsection (2).

570 (7) (a) (i) Upon request in a manner specified by the division, the Driver License
571 Division shall grant to the person an opportunity to be heard within 29 days after the date of
572 arrest under Section 32B-4-409.

573 (ii) The request shall be made within 10 calendar days of the day on which notice is
574 provided.

575 (b) (i) Except as provided in Subsection (7)(b)(ii), a hearing, if held, shall be before the
576 division in:

577 (A) the county in which the arrest occurred; or

578 (B) a county that is adjacent to the county in which the arrest occurred.

579 (ii) The division may hold a hearing in some other county if the division and the person
580 both agree.

581 (c) The hearing shall be documented and shall cover the issues of:

582 (i) whether a peace officer had reasonable grounds to believe the person was operating
583 a motor vehicle or motorboat in violation of Subsection (2)(a);

584 (ii) whether the person refused to submit to the test; and

585 (iii) the test results, if any.

586 (d) In connection with a hearing, the division or its authorized agent may administer
587 oaths and may issue subpoenas for the attendance of witnesses and the production of relevant
588 books and papers and records as defined in Section 46-4-102.

589 (e) One or more members of the division may conduct the hearing.

590 (f) Any decision made after a hearing before any number of the members of the
591 division is as valid as if made after a hearing before the full membership of the division.

592 (8) If, after a hearing, the division determines that a peace officer had reasonable
593 grounds to believe that the person was driving a motor vehicle in violation of Subsection (2)(a),
594 if the person fails to appear before the division as required in the notice, or if the person does
595 not request a hearing under this section, the division shall:

596 (a) for a person 19 years of age or older but under 21 years of age on the date of arrest:

597 (i) deny the person's license until [~~the person is 21 years of age or for a period of 120~~
598 ~~days, whichever is longer;~~] the person complies with Subsection (11)(b)(i) but for a period of
599 not less than six months beginning on the 30th day after the date of arrest for a first offense
600 under Subsection (2)(a) committed on or after July 1, 2009;

601 [~~(b)~~] (ii) suspend the person's license until the person complies with
602 Subsection(11)(b)(i) and until the person is 21 years of age or for a period of two years,
603 whichever is longer, beginning on the 30th day after the date of arrest for a second or
604 subsequent offense under Subsection (2)(a)[~~:(i)~~] committed on or after July 1, 2009, and
605 within 10 years of a prior denial or suspension; [~~and~~]

606 [~~(ii) committed on or after July 1, 2009;~~]

607 [~~(c)~~] (iii) deny the person's application for a license or learner's permit until [~~the person~~
608 ~~is 21 years of age or for a period of one year, whichever is longer;~~] the person complies with
609 Subsection (11)(b)(i) but for a period of not less than six months if:

610 [(i)] (A) the person has not been issued an operator license; and

611 [(ii)] (B) the suspension is for a first offense under Subsection (2)(a) committed on or
612 after July 1, 2009;

613 [~~(d)~~] (iv) deny the person's application for a license or learner's permit until the person
614 complies with Subsection (11)(b)(i) and until the person is 21 years of age or for a period of

615 two years, whichever is longer, if:

616 ~~[(†)]~~ (A) the person has not been issued an operator license; and

617 ~~[(†)]~~ (B) the suspension is for a second or subsequent offense under Subsection (2)(a)[-

618 (A)] committed on or after July 1, 2009, and within 10 years of a prior denial or suspension;

619 ~~[and]~~ or

620 ~~[(B)]~~ committed on or after July 1, 2009; or]

621 ~~[(†)]~~ (v) deny or suspend a person's license for the denial and suspension periods in

622 effect:

623 (A) prior to July 1, 2009, for a violation under Subsection (2)(a) that was committed

624 prior to July 1, 2009[-]; or

625 (B) from July 1, 2009, through June 30, 2011, if the person was 20 years 6 months of
626 age or older but under 21 years of age at the time of arrest and the conviction under Subsection
627 (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011; and

628 (b) for a person under 19 years of age on the date of arrest:

629 (i) deny the person's license until the person complies with Subsection (11)(b)(i) but
630 for a period of not less than one year beginning on the 30th day after the date of arrest for a first
631 offense under Subsection (2)(a) committed on or after July 1, 2009;

632 (ii) suspend the person's license until the person complies with Subsection (11)(b)(i)
633 and until the person is 21 years of age or for a period of two years, whichever is longer,
634 beginning on the 30th day after the date of arrest for a second or subsequent offense under
635 Subsection (2)(a) committed on or after July 1, 2009, and within 10 years of a prior denial or
636 suspension;

637 (iii) deny the person's application for a license or learner's permit until the person
638 complies with Subsection (11)(b)(i) but for a period of not less than one year if:

639 (A) the person has not been issued an operator license; and

640 (B) the suspension is for a first offense under Subsection (2)(a) committed on or after
641 July 1, 2009;

642 (iv) deny the person's application for a license or learner's permit until the person
643 complies with Subsection(11)(b)(i) and until the person is 21 years of age or for a period of two
644 years, whichever is longer, if:

645 (A) the person has not been issued an operator license; and

646 (B) the suspension is for a second or subsequent offense under Subsection (2)(a)
647 committed on or after July 1, 2009, and within 10 years of a prior denial or suspension; or
648 (v) deny or suspend a person's license for the denial and suspension periods in effect
649 prior to July 1, 2009, for a violation under Subsection (2)(a) that was committed prior to July 1,
650 2009.

651 (9) (a) (i) Following denial or suspension the division shall assess against a person, in
652 addition to any fee imposed under Subsection 53-3-205(12), a fee under Section 53-3-105,
653 which shall be paid before the person's driving privilege is reinstated, to cover administrative
654 costs.

655 (ii) This fee shall be canceled if the person obtains an unappealed division hearing or
656 court decision that the suspension was not proper.

657 (b) A person whose operator license has been denied, suspended, or postponed by the
658 division under this section following an administrative hearing may file a petition within 30
659 days after the suspension for a hearing on the matter which, if held, is governed by Section
660 53-3-224.

661 (10) After reinstatement of an operator license for a first offense under this section, a
662 report authorized under Section 53-3-104 may not contain evidence of the denial or suspension
663 of the person's operator license under this section if the person has not been convicted of any
664 other offense for which the denial or suspension may be extended.

665 (11) (a) In addition to the penalties in Subsection (8), a person who violates Subsection
666 (2)(a) shall:

667 (i) obtain an assessment and recommendation for appropriate action from a substance
668 abuse program, but any associated costs shall be the person's responsibility; or

669 (ii) be referred by the division to the local substance abuse authority for an assessment
670 and recommendation for appropriate action.

671 (b) (i) Reinstatement of the person's operator license or the right to obtain an operator
672 license within five years of the effective date of the license sanction under Subsection (8) is
673 contingent upon successful completion of the action recommended by the local substance
674 abuse authority or the substance abuse program.

675 (ii) The local substance abuse authority's or the substance abuse program's
676 recommended action shall be determined by an assessment of the person's alcohol abuse and

677 may include:

678 (A) a targeted education and prevention program;

679 (B) an early intervention program; or

680 (C) a substance abuse treatment program.

681 (iii) Successful completion of the recommended action shall be determined by
682 standards established by the Division of Substance Abuse and Mental Health.

683 (c) At the conclusion of the penalty period imposed under Subsection (2), the local
684 substance abuse authority or the substance abuse program shall notify the division of the
685 person's status regarding completion of the recommended action.

686 (d) The local substance abuse authorities and the substance abuse programs shall
687 cooperate with the division in:

688 (i) conducting the assessments;

689 (ii) making appropriate recommendations for action; and

690 (iii) notifying the division about the person's status regarding completion of the
691 recommended action.

692 (e) (i) The local substance abuse authority is responsible for the cost of the assessment
693 of the person's alcohol abuse, if the assessment is conducted by the local substance abuse
694 authority.

695 (ii) The local substance abuse authority or a substance abuse program selected by a
696 person is responsible for:

697 (A) conducting an assessment of the person's alcohol abuse; and

698 (B) for making a referral to an appropriate program on the basis of the findings of the
699 assessment.

700 (iii) (A) The person who violated Subsection (2)(a) is responsible for all costs and fees
701 associated with the recommended program to which the person selected or is referred.

702 (B) The costs and fees under Subsection (11)(e)(iii)(A) shall be based on a sliding scale
703 consistent with the local substance abuse authority's policies and practices regarding fees for
704 services or determined by the substance abuse program.

705 Section 6. **Effective date.**

706 This bill takes effect on July 1, 2011.

FISCAL NOTE

S.B. 28 1st Sub. (Green)

SHORT TITLE: Alcohol or Drug Related Offense Amendments

SPONSOR: Jenkins, S.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will increase the amount of certain DUI-related cases in the Courts. This will cost the Courts ongoing General Funds of \$24,900 beginning in FY 2012 and each year thereafter.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	\$24,900	\$24,900
Total Expenditure	\$0	\$24,900	\$24,900
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$24,900)	(\$24,900)
Net Impact, General/Education Funds	\$0	(\$24,900)	(\$24,900)

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill will increase the amount of certain DUI-related cases in local justice courts. This will cost the local justice courts a total of \$31,900 across the State.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.