

ALCOHOL OR DRUG RELATED OFFENSE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: Rebecca P. Edwards

LONG TITLE

Committee Note:

The Transportation Interim Committee recommended this bill.

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:



- 28 **41-6a-509**, as last amended by Laws of Utah 2009, Chapters 201 and 390
- 29 **41-6a-517**, as last amended by Laws of Utah 2009, Chapter 390
- 30 **41-6a-521**, as last amended by Laws of Utah 2009, Chapters 40 and 390
- 31 **53-3-223**, as last amended by Laws of Utah 2009, Chapters 40, 201, and 390
- 32 **53-3-231 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 276

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

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

36 **41-6a-509. Driver license suspension or revocation for a driving under the**
 37 **influence violation.**

38 (1) (a) The Driver License Division shall:

39 (i) if the person is 21 years of age or older at the time of arrest:

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

42 (B) revoke for a period of two years the license of a person if:

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

44 (II) the current driving under the influence violation under Section 41-6a-502 is
 45 committed:

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

47 (Bb) on or after July 1, 2009;

48 (ii) if the person is 19 years of age or older but under 21 years of age at the time of
 49 arrest:

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

64 (Aa) within a period of 10 years from the date of the prior violation; and

65 (Bb) on or after July 1, 2009; or

66 (D) deny the person's application for a license or learner's permit until the person is 21

67 years of age or for a period of two years, whichever is longer, if:

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

69 (II) the current driving under the influence violation under Section 41-6a-502 is

70 committed:

71 (Aa) within a period of 10 years from the date of the prior violation; and

72 (Bb) on or after July 1, 2009; and

73 (III) the person has not been issued an operator license;

74 [(ii)] (iii) if the person is under [21] 19 years of age at the time of arrest:

75 (A) suspend the person's driver license until the person is 21 years of age [~~or for a~~

76 ~~period of 120 days, whichever is longer,] if the person is convicted for the first time of a~~

77 driving under the influence violation under Section 41-6a-502 of an offense that was

78 committed on or after July 1, 2009;

79 (B) deny the person's application for a license or learner's permit until the person is 21

80 years of age [~~or for a period of 120 days, whichever is longer,] if the person:~~

81 (I) is convicted for the first time of a driving under the influence violation under

82 Section 41-6a-502 of an offense committed on or after July 1, 2009; and

83 (II) has not been issued an operator license;

84 (C) revoke the person's driver license until the person is 21 years of age [~~or for a period~~

85 ~~of two years, whichever is longer,] if:~~

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

87 (II) the current driving under the influence violation under Section 41-6a-502 is

88 committed:

89 (Aa) within a period of 10 years from the date of the prior violation; and

90 (Bb) on or after July 1, 2009; or
91 (D) deny the person's application for a license or learner's permit until the person is 21
92 years of age [~~or for a period of two years, whichever is longer,~~] if:
93 (I) the person has a prior conviction as defined under Subsection 41-6a-501(2);
94 (II) the current driving under the influence violation under Section 41-6a-502 is
95 committed:
96 (Aa) within a period of 10 years from the date of the prior violation; and
97 (Bb) on or after July 1, 2009; and
98 (III) the person has not been issued an operator license; and
99 (iii) suspend or revoke the license of a person as ordered by the court under Subsection
100 (2).
101 (b) The Driver License Division shall:
102 (i) 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 (ii) 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 (A) the person was 19 years of age or older but under 21 years of age at the time of
108 arrest; and
109 (B) 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) The Driver License Division shall subtract from any suspension 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) If a conviction recorded as impaired driving is amended to a 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) may not subtract from any suspension or revocation any time for which a license
119 was previously suspended or revoked under Section 53-3-223 or 53-3-231; and
120 (ii) shall start the suspension or revocation time under Subsection (1)(a) on the date of

121 the amended conviction.

122 (e) 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 (1)(a)(ii)(A) or (B) or Subsection (1)(a)(iii)(A) or
125 (B) prior to completion of the suspension period if the person:

126 (i) (A) for a suspension imposed under Subsection (1)(a)(ii)(A) or (B), completes at
127 least six months of the license suspension; or

128 (B) for a license suspension imposed under Subsection (1)(a)(iii)(A) or (B), completes
129 at least two years of the license suspension;

130 (ii) completes a screening;

131 (iii) completes an assessment, if it is found appropriate by a screening under
132 Subsection (1)(e)(ii);

133 (iv) completes substance abuse treatment if it is found appropriate by the assessment
134 under Subsection (1)(e)(iii);

135 (v) completes an educational series if substance abuse treatment is not required by an
136 assessment under Subsection (1)(e)(iii) or the court does not order substance abuse treatment;

137 (vi) 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 (1)(a)(ii)(A) or (B) or Subsection (1)(a)(iii)(A) or (B);

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

142 (viii) (A) is 18 years of age or older and provides a sworn statement to the court that
143 the person has not ingested or had access to alcohol during the suspension period imposed
144 under Subsection (1)(a)(ii)(A) or (B) or Subsection (1)(a)(iii)(A) or (B); or

145 (B) 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:

148 (I) has not consumed alcohol during the suspension period imposed under Subsection
149 (1)(a)(ii)(A) or (B) or Subsection (1)(a)(iii)(A) or (B); and

150 (II) has not had access to alcohol during the suspension period imposed under
151 Subsection (1)(a)(ii)(A) or (B) or Subsection (1)(a)(iii)(A) or (B).

152 (f) If the court shortens a person's license suspension period in accordance with the
 153 requirements of Subsection (1)(e), the court shall forward the order shortening the person's
 154 suspension period prior to the completion of the suspension period imposed under Subsection
 155 (1)(a)(ii)(A) or (B) or Subsection (1)(a)(iii)(A) or (B) to the Driver License Division.

156 (2) (a) (i) In addition to any other penalties provided in this section, a court may order
 157 the operator's license of a person who is convicted of a violation of Section 41-6a-502 to be
 158 suspended or revoked for an additional period of 90 days, 120 days, 180 days, one year, or two
 159 years to remove from the highways those persons who have shown they are safety hazards.

160 (ii) The additional suspension or revocation period provided in this Subsection (2) shall
 161 begin the date on which the individual would be eligible to reinstate the individual's driving
 162 privilege for a violation of Section 41-6a-502.

163 (b) If the court suspends or revokes the person's license under this Subsection (2), the
 164 court shall prepare and send to the Driver License Division an order to suspend or revoke that
 165 person's driving privileges for a specified period of time.

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

167 (i) complete all court ordered:

168 (A) screening;

169 (B) assessment;

170 (C) educational series;

171 (D) substance abuse treatment; and

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

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

174 (b) Upon receiving the notification described in Subsection (3)(a), the division shall
 175 suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and (3).

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

177 **41-6a-517. Definitions -- Driving with any measurable controlled substance in the**
 178 **body -- Penalties -- Arrest without warrant.**

179 (1) As used in this section:

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

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

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

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

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

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

189 (a) involuntarily ingested by the accused;

190 (b) prescribed by a practitioner for use by the accused; or

191 (c) otherwise legally ingested.

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

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

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

200 (6) The Driver License Division shall:

201 (a) if the person is 21 years of age or older on the date of arrest:

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

204 (ii) revoke, for a period of two years, the driver license of a person if:

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

206 (B) the current violation under Subsection (2) is committed:

207 (I) within a period of 10 years after the date of the prior violation; and

208 (II) on or after July 1, 2009;

209 (b) if the person is 19 years of age or older but under 21 years of age on the date of
210 arrest:

211 (i) suspend, until the person is 21 years of age or for a period of one year, whichever is
212 longer, the driver license of a person convicted under Subsection (2) of an offense committed
213 on or after July 1, 2011; or

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

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

217 (B) the current violation under Subsection (2) is committed:

218 (I) within a period of 10 years after the date of the prior violation; and

219 (II) on or after July 1, 2009;

220 ~~[(b)]~~ (c) if the person is under ~~[21]~~ 19 years of age on the date of arrest:

221 (i) suspend, until the person is 21 years of age ~~[or for a period of 120 days]~~, the driver
222 license of a person convicted under Subsection (2) of an offense committed on or after July 1,
223 2009; or

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

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

227 (B) the current violation under Subsection (2) is committed:

228 (I) within a period of 10 years after the date of the prior violation; and

229 (II) on or after July 1, 2009;

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

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

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

239 (A) the person was 19 years of age or older but under 21 years of age at the time of
240 arrest; and

241 (B) the conviction under Subsection (2) is for an offense that was committed on or
242 after July 1, 2009, and prior to July 1, 2011.

243 (7) A court that reported a conviction of a violation of this section for a violation that
244 occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension

245 period imposed under Subsection (6)(b)(i) or (6)(c)(i) prior to completion of the suspension
246 period if the person:

247 (a) (i) for a license suspension imposed under Subsection (6)(b)(i), completes at least
248 six months of the license suspension; or

249 (ii) for a license suspension imposed under Subsection (6)(c)(i), completes at least two
250 years of the license suspension;

251 (b) completes a screening;

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

254 (d) completes substance abuse treatment if it is found appropriate by the assessment
255 under Subsection (7)(c);

256 (e) completes an educational series if substance abuse treatment is not required by the
257 assessment under Subsection (7)(c) or the court does not order substance abuse treatment;

258 (f) has not been convicted of a violation of any motor vehicle law in which the person
259 was involved as the operator of the vehicle during the suspension period imposed under
260 Subsection (6)(b)(i) or (6)(c)(i);

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

263 (h) (i) is 18 years of age or older and provides a sworn statement to the court that the
264 person has not ingested or had access to controlled substances not prescribed by a practitioner
265 for use by the person or alcohol during the suspension period imposed under Subsection
266 (6)(b)(i) or (6)(c)(i); or

267 (ii) is under 18 years of age and has the person's parent or legal guardian provide an
268 affidavit or other sworn statement to the court certifying that to the parent or legal guardian's
269 knowledge the person:

270 (A) has not consumed a controlled substance not prescribed by a practitioner for use by
271 the person or alcohol during the suspension period imposed under Subsection (6)(b)(i) or
272 (6)(c)(i); and

273 (B) has not had access to a controlled substance not prescribed by a practitioner for use
274 by the person or alcohol during the suspension period imposed under Subsection (6)(b)(i) or
275 (6)(c)(i).

276 (8) If the court shortens a person's license suspension period in accordance with the
277 requirements of Subsection (7), the court shall forward the order shortening the person's license
278 suspension period prior to the completion of the suspension period imposed under Subsection
279 (6)(b)(i) or (6)(c)(i) to the Driver License Division.

280 [~~7~~] (9) (a) The court shall notify the Driver License Division if a person fails to:

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

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

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

286 [~~8~~] (10) The court shall order supervised probation in accordance with Section
287 41-6a-507 for a person convicted under Subsection (2).

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

289 **41-6a-521. Revocation hearing for refusal -- Appeal.**

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

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

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

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

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

301 (A) [~~18 months~~] two years if the arrest was made on or after July 1, 2011, unless
302 Subsection (1)(d)(i)(B) applies; or

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

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

307 53-3-232; or

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

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

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

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

317 (I) license sanction for an offense that occurred within the previous 10 years from the
318 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
319 53-3-232; or

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

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

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

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

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

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

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

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

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

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

337 (i) may administer oaths and may issue subpoenas for the attendance of witnesses and

338 the production of relevant books and papers; and

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

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

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

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

348 (A) [~~18 months~~] two years if the arrest was made on or after July 1, 2011, and unless
349 Subsection (5)(a)(i)(B) applies; or

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

352 (I) license sanction for an offense that occurred within the previous 10 years from the
353 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
354 53-3-232; or

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

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

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

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

364 (I) license sanction for an offense that occurred within the previous 10 years from the
365 date of arrest under Section 41-6a-517, 41-6a-520, 41-6a-530, 53-3-223, 53-3-231, or
366 53-3-232; or

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

369 constitute a violation of Section 41-6a-502; or

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

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

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

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

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

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

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

382 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
383 **Hearing and decision -- Suspension and fee -- Judicial review.**

384 (1) (a) If a peace officer has reasonable grounds to believe that a person may be
385 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a
386 certain blood or breath alcohol concentration and driving under the influence of any drug,
387 alcohol, or combination of a drug and alcohol or while having any measurable controlled
388 substance or metabolite of a controlled substance in the person's body in violation of Section
389 41-6a-517, the peace officer may, in connection with arresting the person, request that the
390 person submit to a chemical test or tests to be administered in compliance with the standards
391 under Section 41-6a-520.

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

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

399 (3) If the person submits to a chemical test and the test results indicate a blood or

400 breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer
401 makes a determination, based on reasonable grounds, that the person is otherwise in violation
402 of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of
403 arrest, give notice of the division's intention to suspend the person's license to drive a motor
404 vehicle.

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

- 407 (i) take the Utah license certificate or permit, if any, of the driver;
- 408 (ii) issue a temporary license certificate effective for only 29 days from the date of
409 arrest; and
- 410 (iii) supply to the driver, in a manner specified by the division, basic information
411 regarding how to obtain a prompt hearing before the division.

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

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

- 416 (a) the person's license certificate;
- 417 (b) a copy of the citation issued for the offense;
- 418 (c) a signed report in a manner specified by the division indicating the chemical test
419 results, if any; and
- 420 (d) any other basis for the peace officer's determination that the person has violated
421 Section 41-6a-502 or 41-6a-517.

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

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

- 428 (A) the county in which the arrest occurred; or
 - 429 (B) a county that is adjacent to the county in which the arrest occurred.
- 430 (ii) The division may hold a hearing in some other county if the division and the person

431 both agree.

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

433 (i) whether a peace officer had reasonable grounds to believe the person was driving a
434 motor vehicle in violation of Section 41-6a-502 or 41-6a-517;

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

436 (iii) the test results, if any.

437 (d) (i) In connection with a hearing the division or its authorized agent:

438 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and
439 the production of relevant books and papers; or

440 (B) may issue subpoenas for the attendance of necessary peace officers.

441 (ii) The division shall pay witness fees and mileage from the Transportation Fund in
442 accordance with the rates established in Section 78B-1-119.

443 (e) The division may designate one or more employees to conduct the hearing.

444 (f) Any decision made after a hearing before any designated employee is as valid as if
445 made by the division.

446 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable
447 grounds to believe that the person was driving a motor vehicle in violation of Section
448 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the
449 notice, or if a hearing is not requested under this section, the division shall:

450 (i) if the person is 21 years of age or older at the time of arrest and the arrest was made
451 on or after July 1, 2009, suspend the person's license or permit to operate a motor vehicle for a
452 period of:

453 (A) 120 days beginning on the 30th day after the date of arrest for a first suspension; or

454 (B) two years beginning on the 30th day after the date of arrest for a second or
455 subsequent suspension for an offense that occurred within the previous 10 years; [~~or~~]

456 (ii) if the person is 19 years of age or older but under 21 years of age at the time of
457 arrest and the arrest was made on or after July 1, 2011:

458 (A) suspend the person's license or permit to operate a motor vehicle:

459 (I) for a period of six months, beginning on the 30th day after the date of arrest for a
460 first suspension; or

461 (II) until the person is 21 years of age or for a period of two years, whichever is longer,

462 beginning on the 30th day after the date of arrest for a second or subsequent suspension for an
463 offense that occurred within the previous 10 years; or

464 (B) deny the person's application for a license or learner's permit:

465 (I) for a period of six months for a first suspension, if the person has not been issued an
466 operator license; or

467 (II) until the person is 21 years of age or for a period of two years, whichever is longer,
468 beginning on the 30th day after the date of arrest for a second or subsequent suspension for an
469 offense that occurred within the previous 10 years; or

470 [(ii)] (iii) if the person is under [21] 19 years of age at the time of arrest and the arrest
471 was made on or after July 1, 2009:

472 (A) suspend the person's license or permit to operate a motor vehicle:

473 (I) [until the person is 21 years of age or for a period of 120 days, whichever is longer,]
474 for a period of two years beginning on the 30th day after the date of arrest for a first
475 suspension; or

476 (II) until the person is 21 years of age or for a period of two years, whichever is longer,
477 beginning on the 30th day after the date of arrest for a second or subsequent suspension for an
478 offense that occurred within the previous 10 years; or

479 (B) deny the person's application for a license or learner's permit:

480 (I) [until the person is 21 years of age or for a period of 120 days, whichever is longer,]
481 for a period of two years for a first suspension, if the person has not been issued an operator
482 license; or

483 (II) until the person is 21 years of age or for a period of two years, whichever is longer,
484 beginning on the 30th day after the date of arrest for a second or subsequent suspension for an
485 offense that occurred within the previous 10 years.

486 (b) The division shall deny or suspend a person's license for the denial and suspension
487 periods in effect;

488 (i) prior to July 1, 2009, for an offense that was committed prior to July 1, 2009[-]; or

489 (ii) from July 1, 2009, through June 30, 2011, if:

490 (A) the person was 19 years of age or older but under 21 years of age at the time of
491 arrest; and

492 (B) the conviction under Subsection (2) is for an offense that was committed on or

493 after July 1, 2009, and prior to July 1, 2011.

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

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

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

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

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

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

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

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

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

522 (b) A person whose license has been suspended by the division under this section
523 following an administrative hearing may file a petition within 30 days after the suspension for a

524 hearing on the matter which, if held, is governed by Section 53-3-224.

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

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

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

531 (i) "Local substance abuse authority" has the same meaning as provided in Section
532 62A-15-102.

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

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

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

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

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

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

551 (c) If the person submits to a chemical test and the test results indicate a blood, breath,
552 or urine alcohol content in violation of Subsection (2)(a), or if a peace officer makes a
553 determination, based on reasonable grounds, that the person is otherwise in violation of
554 Subsection (2)(a), a peace officer shall, on behalf of the division and within 24 hours of the

555 arrest, give notice of the division's intention to deny or suspend the person's license to operate a
556 vehicle or refusal to issue a license under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

585 (i) whether a peace officer had reasonable grounds to believe the person was operating

586 a motor vehicle or motorboat in violation of Subsection (2)(a);

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

588 (iii) the test results, if any.

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

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

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

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

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

600 (i) deny the person's license [~~until the person is 21 years of age or for a period of 120~~
601 ~~days, whichever is longer,~~] for a period of six months beginning on the 30th day after the date
602 of arrest for a first offense under Subsection (2)(a) committed on or after July 1, 2009;

603 [~~(b)~~] (ii) suspend the person's license until the person is 21 years of age or for a period
604 of two years, whichever is longer, beginning on the 30th day after the date of arrest for a
605 second or subsequent offense under Subsection (2)(a):

606 [(i)] (A) within 10 years of a prior denial or suspension; and

607 [(ii)] (B) committed on or after July 1, 2009;

608 [~~(c)~~] (iii) deny the person's application for a license or learner's permit [~~until the person~~
609 ~~is 21 years of age or for a period of one year, whichever is longer,~~] for a period of six months
610 if:

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

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

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

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

617 ~~[(i)]~~ (B) the suspension is for a second or subsequent offense under Subsection (2)(a):
618 ~~[(A)]~~ (I) within 10 years of a prior denial or suspension; and
619 ~~[(B)]~~ (II) committed on or after July 1, 2009; or
620 ~~[(e)]~~ (v) deny or suspend a person's license for the denial and suspension periods in
621 effect:
622 (A) prior to July 1, 2009, for a violation under Subsection (2)(a) that was committed
623 prior to July 1, 2009~~[-]; or~~
624 (B) from July 1, 2009, through June 30, 2011, if:
625 (I) the person was 19 years of age or older but under 21 years of age at the time of
626 arrest; and
627 (II) the conviction under Subsection (2) is for an offense that was committed on or after
628 July 1, 2009, and prior to July 1, 2011; and
629 (b) for a person under 19 years of age on the date of arrest:
630 (i) deny the person's license for a period of two years beginning on the 30th day after
631 the date of arrest for a first offense under Subsection (2)(a) committed on or after July 1, 2009;
632 (ii) suspend the person's license until the person is 21 years of age or for a period of
633 two years, whichever is longer, beginning on the 30th day after the date of arrest for a second
634 or subsequent offense under Subsection (2)(a):
635 (A) within 10 years of a prior denial or suspension; and
636 (B) committed on or after July 1, 2009;
637 (iii) deny the person's application for a license or learner's permit for a period of two
638 years 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 is 21
643 years of age or for a period of two years, whichever is longer, if:
644 (A) the person has not been issued an operator license; and
645 (B) the suspension is for a second or subsequent offense under Subsection (2)(a):
646 (I) within 10 years of a prior denial or suspension; and
647 (II) committed on or after July 1, 2009; 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.

Legislative Review Note
as of 11-17-10 2:21 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 28, 2011 General Session

SHORT TITLE: Alcohol or Drug Related Offense Amendments

SPONSOR: Jenkins, S.

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 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.