

Representative Steve Eliason proposes the following substitute bill:

DUI LIABILITY AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends various provisions related to driving under the influence.

Highlighted Provisions:

This bill:

▶ criminalizes a person's refusal to submit to a chemical test for alcohol or drugs related to suspicion of driving under the influence of alcohol or drugs in certain circumstances;

▶ provides penalties for a person's refusal to submit to a chemical test for alcohol or drugs related to suspicion of driving under the influence of alcohol or drugs;

▶ clarifies that driving under the influence is a strict liability offense;

▶ clarifies provisions related to driving in the wrong direction while driving under the influence; ~~H~~→ [and]

▶ clarifies that the determination whether an individual is in actual physical control of a vehicle includes consideration of the totality of the circumstances, and creates a safe harbor provision related to that determination; and ←~~H~~

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:



26 AMENDS:

- 27 41-6a-501, as last amended by Laws of Utah 2018, Chapter 52
- 28 41-6a-502, as last amended by Laws of Utah 2017, Chapter 283
- 29 41-6a-503, as last amended by Laws of Utah 2018, Chapter 138
- 30 41-6a-509, as last amended by Laws of Utah 2017, Chapter 446
- 31 41-6a-518.2, as last amended by Laws of Utah 2019, Chapter 271
- 32 41-6a-520, as last amended by Laws of Utah 2019, Chapters 77 and 349
- 33 41-6a-529, as last amended by Laws of Utah 2018, Chapter 52
- 34 53-3-220, as last amended by Laws of Utah 2018, Chapters 121 and 133
- 35 53-3-223, as last amended by Laws of Utah 2019, Chapter 77
- 36 53-3-231, as last amended by Laws of Utah 2019, Chapter 77
- 37 77-40-105 (Effective 05/01/20), as last amended by Laws of Utah 2019, Chapter 448

38 ENACTS:

39 41-6a-521.1, Utah Code Annotated 1953



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

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

43 **41-6a-501. Definitions.**

44 (1) As used in this part:

45 (a) "Actual physical control" ~~H~~→ **is determined by a consideration of the totality of the**
45a **circumstances, but ←H** does not include a circumstance in which:

46 (i) the person is asleep inside the vehicle;

47 (ii) the person is not in the driver's seat of the vehicle;

48 (iii) the engine of the vehicle is not running;

49 (iv) the vehicle is lawfully parked; and

50 (v) under the facts presented, it is evident that the person ~~H~~→ **[could not have driven] did**

50a **not drive ←H** the

51 vehicle to the location while under the influence of alcohol, a drug, or the combined influence

52 of alcohol and any drug.

53 ~~(a)~~ (b) "Assessment" means an in-depth clinical interview with a licensed mental
54 health therapist:

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

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

460 (b) The failure or inability to obtain the additional test does not affect admissibility of
461 the results of the test or tests taken at the direction of a peace officer, or preclude or delay the
462 test or tests to be taken at the direction of a peace officer.

463 (c) The additional test shall be subsequent to the test or tests administered at the
464 direction of a peace officer.

465 (5) For the purpose of determining whether to submit to a chemical test or tests, the
466 person to be tested does not have the right to consult an attorney or have an attorney, physician,
467 or other person present as a condition for the taking of any test.

468 (6) Notwithstanding the provisions in this section, a blood test taken under this section
469 is subject to Section 77-23-213.

470 (7) A person is guilty of refusing a chemical test if ~~H~~→ a peace officer has issued the
470a warning required in Subsection (2)(a) and ←~~H~~ the person refuses to submit to a test
471 of the person's blood under Subsection (1) after a court has issued a warrant to draw and test
472 the blood.

473 (8) A person who violates Subsection (7) is guilty of:

474 (a) a third degree felony if:

475 (i) the person has two or more prior convictions as defined in Subsection 41-6a-501(2),
476 each of which is within 10 years of:

477 (A) the current conviction; or

478 (B) the commission of the offense upon which the current conviction is based; or

479 (ii) the conviction is at any time after a conviction of:

480 (A) automobile homicide under Section 76-5-207;

481 (B) a felony violation of this section or Section 41-6a-502; or

482 (C) any conviction described in Subsection (8)(a)(ii) which judgment of conviction is
483 reduced under Section 76-3-402; or

484 (b) a class B misdemeanor if none of the circumstances in Subsection (8)(a) applies.

485 (9) As part of any sentence for a conviction of violating this section, the court shall
486 impose the same sentencing as outlined for driving under the influence violations in Section
487 41-6a-505, based on whether this is a first, second, or subsequent conviction as defined by
488 Subsection 41-6a-501(2), with the following modifications:

489 (a) any jail sentence shall be 24 consecutive hours more than would be required under
490 Section 41-6a-505;