

1 **DUI LIABILITY AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Steve Eliason**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

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

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

17 ▶ makes driving under the influence a strict liability offense;

18 ▶ clarifies provisions related to driving in the wrong direction while driving under the
19 influence; and

20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides a special effective date.

25 **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-521](#), as last amended by Laws of Utah 2019, Chapter 77
- 34 [41-6a-529](#), as last amended by Laws of Utah 2018, Chapter 52
- 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- 37 [77-40-105 \(Superseded 05/01/20\)](#), as last amended by Laws of Utah 2018, Chapter 266
- 38 [77-40-105 \(Effective 05/01/20\)](#), as last amended by Laws of Utah 2019, Chapter 448

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

41 Section 1. Section [41-6a-501](#) is amended to read:

42 **[41-6a-501](#). Definitions.**

43 (1) As used in this part:

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

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

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

48 (B) an educational series; or

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

50 (ii) that is approved by the Division of Substance Abuse and Mental Health in
51 accordance with Section [62A-15-105](#).

52 (b) "Driving under the influence court" means a court that is approved as a driving
53 under the influence court by the Utah Judicial Council according to standards established by
54 the Judicial Council.

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

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

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

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

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

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

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

65 (f) "Novice learner driver" means an individual who:

66 (i) has applied for a Utah driver license;

67 (ii) has not previously held a driver license in this state or another state; and

68 (iii) has not completed the requirements for issuance of a Utah driver license.

69 (g) "Screening" means a preliminary appraisal of a person:

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

71 (A) an assessment; or

72 (B) an educational series; and

73 (ii) that is approved by the Division of Substance Abuse and Mental Health in
74 accordance with Section [62A-15-105](#).

75 (h) "Serious bodily injury" means bodily injury that creates or causes:

76 (i) serious permanent disfigurement;

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

78 (iii) a substantial risk of death.

79 (i) "Substance abuse treatment" means treatment obtained at a substance abuse
80 program that is approved by the Division of Substance Abuse and Mental Health in accordance
81 with Section [62A-15-105](#).

82 (j) "Substance abuse treatment program" means a state licensed substance abuse
83 program.

84 (k) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in
85 Section [41-6a-102](#); and

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

87 (A) an off-highway vehicle as defined under Section [41-22-2](#); and

88 (B) a motorboat as defined in Section [73-18-2](#).

89 (2) As used in Section [41-6a-503](#):

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

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

93 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a
94 combination of both-related reckless driving under:

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

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

97 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
98 41-6a-502.5;

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

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

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

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

106 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of
107 conviction is reduced under Section 76-3-402; [~~or~~]

108 (viii) refusal of a chemical test under Section 41-6a-520; or

109 [~~(viii)] (ix) statutes or ordinances previously in effect in this state or in effect in any
110 other state, the United States, or any district, possession, or territory of the United States which
111 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
112 both-related reckless driving if committed in this state, including punishments administered
113 under 10 U.S.C. Sec. 815.~~

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

119 (i) enhancement of penalties under:

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

121 (B) automobile homicide under Section 76-5-207; and
122 (ii) expungement under Title 77, Chapter 40, Utah Expungement Act.
123 Section 2. Section 41-6a-502 is amended to read:

124 **41-6a-502. Driving under the influence of alcohol, drugs, or a combination of**
125 **both or with specified or unsafe blood alcohol concentration -- Reporting of convictions.**

126 (1) A person may not operate or be in actual physical control of a vehicle within this
127 state if the person:

128 (a) has sufficient alcohol in the person's body that a subsequent chemical test shows
129 that the person has a blood or breath alcohol concentration of .05 grams or greater at the time
130 of the test;

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

133 (c) has a blood or breath alcohol concentration of .05 grams or greater at the time of
134 operation or actual physical control.

135 (2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100
136 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of
137 alcohol per 210 liters of breath.

138 (3) A violation of this section includes a violation under a local ordinance similar to
139 this section adopted in compliance with Section 41-6a-510.

140 (4) Beginning on July 1, 2012, a court shall, monthly, send to the Division of
141 Occupational and Professional Licensing, created in Section 58-1-103, a report containing the
142 name, case number, and, if known, the date of birth of each person convicted during the
143 preceding month of a violation of this section for whom there is evidence that the person was
144 driving under the influence, in whole or in part, of a prescribed controlled substance.

145 (5) An offense described in this section is a strict liability offense.

146 (6) (a) A guilty or no contest plea to an offense described in this section may not be
147 held in abeyance.

148 (b) An admission to an offense described in this section in juvenile court may not result
149 in dismissal.

150 Section 3. Section 41-6a-503 is amended to read:

151 **41-6a-503. Penalties for driving under the influence violations.**

152 (1) A person who violates for the first or second time Section 41-6a-502 is guilty of a:

153 (a) class B misdemeanor; or

154 (b) class A misdemeanor if the person:

155 (i) has also inflicted bodily injury upon another as a proximate result of having

156 operated the vehicle in a negligent manner;

157 (ii) had a passenger under 16 years of age in the vehicle at the time of the offense;

158 (iii) was 21 years of age or older and had a passenger under 18 years of age in the

159 vehicle at the time of the offense; or

160 (iv) at the time of the violation of Section 41-6a-502, also violated Section 41-6a-712

161 or 41-6a-714.

162 (2) A person who violates Section 41-6a-502 is guilty of a third degree felony if:

163 (a) the person has also inflicted serious bodily injury upon another as a proximate

164 result of having operated the vehicle in a negligent manner;

165 (b) the person has two or more prior convictions as defined in Subsection

166 41-6a-501(2), each of which is within 10 years of:

167 (i) the current conviction under Section 41-6a-502; or

168 (ii) the commission of the offense upon which the current conviction is based; or

169 (c) the conviction under Section 41-6a-502 is at any time after a conviction of:

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

171 (ii) a felony violation of Section 41-6a-502 or a statute previously in effect in this state

172 that would constitute a violation of Section 41-6a-502 that is committed after July 1, 2001; or

173 (iii) any conviction described in Subsection (2)(c)(i) or (ii) which judgment of

174 conviction is reduced under Section 76-3-402.

175 (3) A person is guilty of a separate offense for each victim suffering bodily injury or

176 serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a

177 result of the person's violation of Section 76-5-207 whether or not the injuries arise from the

178 same episode of driving.

179 Section 4. Section 41-6a-509 is amended to read:

180 **41-6a-509. Driver license suspension or revocation for a driving under the**
181 **influence violation.**

182 (1) The Driver License Division shall, if the person is 21 years of age or older at the

183 time of arrest:

184 (a) suspend for a period of 120 days the operator's license of a person convicted for the
185 first time under Section [41-6a-502](#) [~~of an offense committed on or after July 1, 2009~~] or
186 [41-6a-520](#); or

187 (b) revoke for a period of two years the license of a person if:

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

189 (ii) the current [~~driving under the influence~~] violation under Section [41-6a-502](#) or
190 [41-6a-520](#) is committed[~~-(A)~~] within a period of 10 years from the date of the prior violation[
191 ~~and~~].

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

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

195 (a) suspend the person's driver license until the person is 21 years of age or for a period
196 of one year, whichever is longer, if the person is convicted for the first time of a [~~driving under~~
197 ~~the influence~~] violation under Section [41-6a-502](#) or [41-6a-520](#) of an offense that was
198 committed on or after July 1, 2011;

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

201 (i) is convicted for the first time of a [~~driving under the influence~~] violation under
202 Section [41-6a-502](#) or [41-6a-520](#) of an offense committed on or after July 1, 2011; and

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

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

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

207 (ii) the current [~~driving under the influence~~] violation under Section [41-6a-502](#) or
208 [41-6a-520](#) is committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the
209 date of the prior violation; or

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

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

213 (ii) the current [~~driving under the influence~~] violation under Section [41-6a-502](#) or

214 [41-6a-520](#) is committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the
215 date of the prior violation; and

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

217 (3) The Driver License Division shall, if the person is under 19 years of age at the time
218 of arrest:

219 (a) suspend the person's driver license until the person is 21 years of age if the person
220 is convicted for the first time of a [~~driving under the influence~~] violation under Section
221 [41-6a-502](#) [~~of an offense that was committed on or after July 1, 2009~~] or [41-6a-520](#);

222 (b) deny the person's application for a license or learner's permit until the person is 21
223 years of age if the person:

224 (i) is convicted for the first time of a [~~driving under the influence violation~~] under
225 Section [41-6a-502](#) [~~of an offense committed on or after July 1, 2009~~] or [41-6a-520](#); and

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

227 (c) revoke the person's driver license until the person is 21 years of age if:

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

229 (ii) the current [~~driving under the influence~~] violation under Section [41-6a-502](#) or
230 [41-6a-520](#) is committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the
231 date of the prior violation; or

232 (d) deny the person's application for a license or learner's permit until the person is 21
233 years of age if:

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

235 (ii) the current [~~driving under the influence~~] violation under Section [41-6a-502](#) or
236 [41-6a-520](#) is committed [~~on or after July 1, 2009, and~~] within a period of 10 years from the
237 date of the prior violation; and

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

239 (4) The Driver License Division shall suspend or revoke the license of a person as
240 ordered by the court under Subsection [~~(10)~~] (9).

241 [~~(5) The Driver License Division shall:~~]

242 [~~(a) deny, suspend, or revoke the operator's license of a person convicted under Section~~
243 [41-6a-502](#) of an offense that was committed prior to July 1, 2009, for the denial, suspension, or
244 revocation periods in effect prior to July 1, 2009; or]

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

247 ~~[(i) the person was 20 years of age or older but under 21 years of age at the time of~~
248 ~~arrest; and]~~

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

251 ~~[(6)]~~ (5) The Driver License Division shall subtract from any suspension or revocation
252 period the number of days for which a license was previously suspended under Section
253 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon
254 which the record of conviction is based.

255 ~~[(7)]~~ (6) If a conviction recorded as impaired driving is amended to a driving under the
256 influence conviction under Section 41-6a-502 in accordance with Subsection
257 41-6a-502.5(3)(a)(ii), the Driver License Division:

258 (a) may not subtract from any suspension or revocation any time for which a license
259 was previously suspended or revoked under Section 53-3-223 or 53-3-231; and

260 (b) shall start the suspension or revocation time under Subsection (1) on the date of the
261 amended conviction.

262 ~~[(8)]~~ (7) A court that reported a conviction of a violation of Section 41-6a-502 for a
263 violation that occurred on or after July 1, 2009, to the Driver License Division may shorten the
264 suspension period imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b) prior to
265 completion of the suspension period if the person:

266 (a) completes at least six months of the license suspension;

267 (b) completes a screening;

268 (c) completes an assessment, if it is found appropriate by a screening under Subsection
269 ~~[(8)]~~ (7)(b);

270 (d) completes substance abuse treatment if it is found appropriate by the assessment
271 under Subsection ~~[(8)]~~ (7)(c);

272 (e) completes an educational series if substance abuse treatment is not required by an
273 assessment under Subsection ~~[(8)]~~ (7)(c) or the court does not order substance abuse treatment;

274 (f) has not been convicted of a violation of any motor vehicle law in which the person
275 was involved as the operator of the vehicle during the suspension period imposed under

276 Subsection (2)(a) or (b) or Subsection (3)(a) or (b);

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

279 (h) (i) is 18 years of age or older and provides a sworn statement to the court that the
280 person has not unlawfully consumed alcohol during the suspension period imposed under
281 Subsection (2)(a) or (b) or Subsection (3)(a) or (b); or

282 (ii) is under 18 years of age and has the person's parent or legal guardian provide an
283 affidavit or sworn statement to the court certifying that to the parent or legal guardian's
284 knowledge the person has not unlawfully consumed alcohol during the suspension period
285 imposed under Subsection (2)(a) or (b) or Subsection (3)(a) or (b).

286 ~~[(9)]~~ (8) If the court shortens a person's license suspension period in accordance with
287 the requirements of Subsection ~~[(8)]~~ (7), the court shall forward the order shortening the
288 person's suspension period prior to the completion of the suspension period imposed under
289 Subsection (2)(a) or (b) or Subsection (3)(a) or (b) to the Driver License Division.

290 ~~[(10)]~~ (9) (a) (i) In addition to any other penalties provided in this section, a court may
291 order the operator's license of a person who is convicted of a violation of Section 41-6a-502 to
292 be suspended or revoked for an additional period of 90 days, 120 days, 180 days, one year, or
293 two years to remove from the highways those persons who have shown they are safety hazards.

294 (ii) The additional suspension or revocation period provided in this Subsection ~~[(10)]~~
295 (9) shall begin the date on which the individual would be eligible to reinstate the individual's
296 driving privilege for a violation of Section 41-6a-502.

297 (b) If the court suspends or revokes the person's license under this Subsection ~~[(10)]~~
298 (9), the court shall prepare and send to the Driver License Division an order to suspend or
299 revoke that person's driving privileges for a specified period of time.

300 ~~[(11)]~~ (10) (a) The court shall notify the Driver License Division if a person fails to:

301 (i) complete all court ordered:

302 (A) screening;

303 (B) assessment;

304 (C) educational series;

305 (D) substance abuse treatment; and

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

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

308 (b) Upon receiving the notification described in Subsection ~~[(11)]~~ (10)(a), the division
309 shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and
310 (3).

311 ~~[(12)]~~ (11) (a) A court that reported a conviction of a violation of Section 41-6a-502 to
312 the Driver License Division may shorten the suspension period imposed under Subsection (1)
313 before completion of the suspension period if the person is participating in or has successfully
314 completed a 24-7 sobriety program as defined in Section 41-6a-515.5.

315 (b) If the court shortens a person's license suspension period in accordance with the
316 requirements of this Subsection ~~[(12)]~~ (11), the court shall forward to the Driver License
317 Division the order shortening the person's suspension period.

318 (c) The court shall notify the Driver License Division if a person fails to complete all
319 requirements of a 24-7 sobriety program.

320 (d) Upon receiving the notification described in Subsection ~~[(12)]~~ (11)(c), the division
321 shall suspend the person's driving privilege in accordance with Subsections 53-3-221(2) and
322 (3).

323 Section 5. Section 41-6a-518.2 is amended to read:

324 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**
325 **interlock system.**

326 (1) As used in this section:

327 (a) "Ignition interlock system" means a constant monitoring device or any similar
328 device that:

329 (i) is in working order at the time of operation or actual physical control; and

330 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection
331 41-6a-518(8).

332 (b) (i) "Interlock restricted driver" means a person who:

333 (A) has been ordered by a court or the Board of Pardons and Parole as a condition of
334 probation or parole not to operate a motor vehicle without an ignition interlock system;

335 (B) within the last 18 months has been convicted of a ~~[driving under the influence]~~
336 violation under Section 41-6a-502 ~~[that was committed on or after July 1, 2009]~~ or 41-6a-520;

337 (C) (I) within the last three years has been convicted of an offense ~~[that occurred after~~

338 ~~May 1, 2006]~~ which would be a conviction as defined under Section 41-6a-501; and
339 (II) the offense described under Subsection (1)(b)(i)(C)(I) is committed within 10 years
340 from the date that one or more prior offenses was committed if the prior offense resulted in a
341 conviction as defined in Subsection 41-6a-501(2);
342 (D) within the last three years has been convicted of a violation of this section;
343 ~~[(E) within the last three years has had the person's driving privilege revoked for~~
344 ~~refusal to submit to a chemical test under Section 41-6a-520, which refusal occurred after May~~
345 ~~1, 2006;]~~
346 ~~[(F)]~~ (E) within the last three years has been convicted of a violation of Section
347 41-6a-502 and was under the age of 21 at the time the offense was committed;
348 ~~[(G)]~~ (F) within the last six years has been convicted of a felony violation of Section
349 41-6a-502 or 41-6a-520 for an offense that occurred after May 1, 2006; or
350 ~~[(H)]~~ (G) within the last 10 years has been convicted of automobile homicide under
351 Section 76-5-207 for an offense that occurred after May 1, 2006.
352 (ii) "Interlock restricted driver" does not include a person:
353 (A) whose conviction described in Subsection (1)(b)(i)(C)(I) is a conviction under
354 Section 41-6a-502 that does not involve alcohol or a conviction under Section 41-6a-517 and
355 whose prior convictions described in Subsection (1)(b)(i)(C)(II) are all convictions under
356 Section 41-6a-502 that did not involve alcohol or convictions under Section 41-6a-517;
357 (B) whose conviction described in Subsection (1)(b)(i)(B) or (F) is a conviction under
358 Section 41-6a-502 that does not involve alcohol and the convicting court notifies the Driver
359 License Division at the time of sentencing that the conviction does not involve alcohol; or
360 (C) whose conviction described in Subsection (1)(b)(i)(B), (C), or (F) is a conviction
361 under Section 41-6a-502 that does not involve alcohol and the ignition interlock restriction is
362 removed as described in Subsection (7).
363 (2) The division shall post the ignition interlock restriction on a person's electronic
364 record that is available to law enforcement.
365 (3) For purposes of this section, a plea of guilty or no contest to a violation of Section
366 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,
367 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently
368 reduced or dismissed in accordance with the plea in abeyance agreement.

369 (4) An interlock restricted driver who operates or is in actual physical control of a
370 vehicle in the state without an ignition interlock system is guilty of a class B misdemeanor.

371 (5) It is an affirmative defense to a charge of a violation of Subsection (4) if:

372 (a) the interlock restricted driver operated or was in actual physical control of a vehicle
373 owned by the interlock restricted driver's employer;

374 (b) the interlock restricted driver had given written notice to the employer of the
375 interlock restricted driver's interlock restricted status prior to the operation or actual physical
376 control under Subsection (5)(a);

377 (c) the interlock restricted driver had on the interlock restricted driver's person, or in
378 the vehicle, at the time of operation or physical control employer verification, as defined in
379 Subsection 41-6a-518(1); and

380 (d) the operation or actual physical control described in Subsection (5)(a) was in the
381 scope of the interlock restricted driver's employment.

382 (6) The affirmative defense described in Subsection (5) does not apply to:

383 (a) an employer-owned motor vehicle that is made available to an interlock restricted
384 driver for personal use; or

385 (b) a motor vehicle owned by a business entity that is entirely or partly owned or
386 controlled by the interlock restricted driver.

387 (7) (a) An individual with an ignition interlock restriction may petition the division for
388 removal of the restriction if the individual's offense did not involve alcohol.

389 (b) If the division is able to establish that an individual's offense did not involve
390 alcohol, the division may remove the ignition interlock restriction.

391 Section 6. Section 41-6a-520 is amended to read:

392 **41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of**
393 **tests -- Refusal -- Warning, report.**

394 (1) (a) A person operating a motor vehicle in this state is considered to have given the
395 person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for
396 the purpose of determining whether the person was operating or in actual physical control of a
397 motor vehicle while:

398 (i) having a blood or breath alcohol content statutorily prohibited under Section
399 41-6a-502, 41-6a-530, or 53-3-231;

400 (ii) under the influence of alcohol, any drug, or combination of alcohol and any drug
401 under Section 41-6a-502; or

402 (iii) having any measurable controlled substance or metabolite of a controlled
403 substance in the person's body in violation of Section 41-6a-517.

404 (b) A test or tests authorized under this Subsection (1) must be administered at the
405 direction of a peace officer having grounds to believe that person to have been operating or in
406 actual physical control of a motor vehicle while in violation of any provision under Subsections
407 (1)(a)(i) through (iii).

408 (c) (i) The peace officer determines which of the tests are administered and how many
409 of them are administered.

410 (ii) If a peace officer requests more than one test, refusal by a person to take one or
411 more requested tests, even though the person does submit to any other requested test or tests, is
412 a refusal under this section.

413 (d) (i) A person who has been requested under this section to submit to a chemical test
414 or tests of the person's breath, blood, or urine, or oral fluids may not select the test or tests to be
415 administered.

416 (ii) The failure or inability of a peace officer to arrange for any specific chemical test is
417 not a defense to taking a test requested by a peace officer, and it is not a defense in any
418 criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the
419 requested test or tests.

420 (2) (a) A peace officer requesting a test or tests shall warn a person that refusal to
421 submit to the test or tests may result in criminal prosecution, revocation of the person's license
422 to operate a motor vehicle, a five or 10 year prohibition of driving with any measurable or
423 detectable amount of alcohol in the person's body depending on the person's prior driving
424 history, and a three-year prohibition of driving without an ignition interlock device if the
425 person:

426 (i) has been placed under arrest;

427 (ii) has then been requested by a peace officer to submit to any one or more of the
428 chemical tests under Subsection (1); and

429 (iii) refuses to submit to any chemical test requested.

430 (b) (i) Following the warning under Subsection (2)(a), if the person does not

431 immediately request that the chemical test or tests as offered by a peace officer be
432 administered, a peace officer shall, on behalf of the Driver License Division and within 24
433 hours of the arrest, give notice of the Driver License Division's intention to revoke the person's
434 privilege or license to operate a motor vehicle.

435 (ii) When a peace officer gives the notice on behalf of the Driver License Division, the
436 peace officer shall supply to the operator, in a manner specified by the Driver License Division,
437 basic information regarding how to obtain a hearing before the Driver License Division.

438 (c) As a matter of procedure, the peace officer shall submit a signed report, within 10
439 calendar days after the day on which notice is provided under Subsection (2)(b), that:

440 (i) the peace officer had grounds to believe the arrested person was in violation of any
441 provision under Subsections (1)(a)(i) through (iii); and

442 (ii) the person had refused to submit to a chemical test or tests under Subsection (1).

443 (3) Upon the request of the person who was tested, the results of the test or tests shall
444 be made available to the person.

445 (4) (a) The person to be tested may, at the person's own expense, have a physician or a
446 physician assistant of the person's own choice administer a chemical test in addition to the test
447 or tests administered at the direction of a peace officer.

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

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

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

456 (6) Notwithstanding the provisions in this section, a blood test taken under this section
457 is subject to Section [77-23-213](#).

458 (7) A person is guilty of refusing a chemical test if the person:

459 (a) refuses to submit to a breath test under Subsection (1) after receiving the warnings
460 under Subsection (2)(a);

461 (b) intentionally provides an insufficient breath sample for analysis after submitting to

462 a breath test under Subsection (1); or
463 (c) refuses to submit to a test of the person's blood, urine, or oral fluids under
464 Subsection (1) after a court has issued a warrant to draw and test the blood, urine, or oral
465 fluids.
466 (8) A person who violates Subsection (7) is guilty of:
467 (a) a third degree felony if:
468 (i) the person has two or more prior convictions as defined in Subsection [41-6a-501\(2\)](#),
469 each of which is within 10 years of:
470 (A) the current conviction; or
471 (B) the commission of the offense upon which the current conviction is based; or
472 (ii) the conviction is at any time after a conviction of:
473 (A) automobile homicide under Section [76-5-207](#);
474 (B) a felony violation of this section or Section [41-6a-502](#); or
475 (C) any conviction described in Subsection (8)(a)(ii) which judgment of conviction is
476 reduced under Section [76-3-402](#); or
477 (b) a class B misdemeanor if none of the circumstances in Subsection (8)(a) applies.
478 (9) As part of any sentence for a conviction of violating this section, the court shall
479 impose the same sentencing as outlined for driving under the influence violations in Section
480 [41-6a-505](#), based on whether this is a first, second, or subsequent conviction as defined by
481 Subsection [41-6a-501\(2\)](#), with the following modifications:
482 (a) any jail sentence shall be 24 consecutive hours more than would be required under
483 Section [41-6a-505](#);
484 (b) any fine imposed shall be \$100 more than would be required under Section
485 [41-6a-505](#); and
486 (c) the court shall order one or more of the following:
487 (i) the installation of an ignition interlock system as a condition of probation for the
488 individual in accordance with Section [41-6a-518](#);
489 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring
490 device as a condition of probation for the individual; or
491 (iii) the imposition of home confinement through the use of electronic monitoring in
492 accordance with Section [41-6a-506](#).

493 (10) The offense of refusal to submit to a chemical test under this section does not
494 merge with any violation of Section 41-6a-502, 41-6a-530, or 53-3-231.

495 Section 7. Section **41-6a-521** is amended to read:

496 **41-6a-521. Revocation hearing for refusal -- Appeal.**

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

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

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

504 (d) If the person does not make a request for a hearing before the Driver License
505 Division under this Subsection (1), the person's privilege to operate a motor vehicle in the state
506 is revoked beginning on the 45th day after the date of arrest:

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

508 (A) 18 months, unless Subsection (1)(d)(i)(B) applies; or

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

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

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

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

517 (A) until the person is 21 years of age or for a period of two years, whichever is longer,
518 if the arrest was made on or after July 1, 2011, unless Subsection (1)(d)(ii)(B) applies; or

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

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

523 (II) conviction for an offense that occurred within the previous 10 years from the date

524 of arrest under Section 41-6a-502 or a statute previously in effect in this state that would
525 constitute a violation of Section 41-6a-502; or

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

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

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

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

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

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

535 (a) whether a peace officer had reasonable grounds to believe that a person was
536 operating a motor vehicle in violation of Section 41-6a-502, 41-6a-517, 41-6a-530, or
537 53-3-231; and

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

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

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

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

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

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

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

551 (A) 18 months unless Subsection (5)(a)(i)(B) applies; or

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

554 (I) license sanction for an offense that occurred within the previous 10 years from the

555 date of arrest under Section [41-6a-517](#), [41-6a-520](#), [41-6a-530](#), [53-3-223](#), or [53-3-231](#); or

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

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

560 (A) until the person is 21 years of age or for a period of two years, whichever is longer,
561 for an arrest that was made on or after July 1, 2011, and unless Subsection (5)(a)(ii)(B) applies;
562 or

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

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

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

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

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

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

577 (6) (a) Any person whose license has been revoked by the Driver License Division
578 under this section following an administrative hearing may seek judicial review unless the
579 person is a defendant in a pending or adjudicated criminal prosecution for violating Section
580 [41-6a-520](#).

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

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

583 Section 8. Section [41-6a-529](#) is amended to read:

584 **[41-6a-529](#). Definitions -- Alcohol restricted drivers.**

585 (1) As used in this section and Section [41-6a-530](#), "alcohol restricted driver" means a

586 person who:

587 (a) within the last two years:

588 (i) has been convicted of:

589 (A) a misdemeanor violation of Section 41-6a-502;

590 (B) alcohol, any drug, or a combination of both-related reckless driving under Section
591 41-6a-512;

592 (C) impaired driving under Section 41-6a-502.5;

593 (D) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination
594 of both-related reckless driving, or impaired driving adopted in compliance with Section
595 41-6a-510;

596 (E) a violation described in Subsections (1)(a)(i)(A) through (D), which judgment of
597 conviction is reduced under Section 76-3-402; or

598 (F) statutes or ordinances previously in effect in this state or in effect in any other state,
599 the United States, or any district, possession, or territory of the United States which would
600 constitute a violation of Section 41-6a-502, alcohol, any drug, or a combination of both-related
601 reckless driving, or impaired driving if committed in this state, including punishments
602 administered under 10 U.S.C. Sec. 815; or

603 (ii) has had the person's driving privilege suspended under Section 53-3-223 for an
604 alcohol-related offense based on an arrest which occurred on or after July 1, 2005;

605 (b) within the last three years has been convicted of a violation of this section or
606 Section 41-6a-518.2;

607 (c) within the last five years:

608 (i) has had the person's driving privilege revoked or has been convicted of a
609 misdemeanor for refusal to submit to a chemical test under Section 41-6a-520, which refusal
610 occurred on or after July 1, 2005; or

611 (ii) has been convicted of a class A misdemeanor violation of Section 41-6a-502
612 committed on or after July 1, 2008;

613 (d) within the last 10 years:

614 (i) has been convicted of an offense described in Subsection (1)(a)(i) which offense
615 was committed within 10 years of the commission of a prior offense described in Subsection
616 (1)(a)(i) for which the person was convicted; [~~or~~]

617 (ii) has been convicted of a felony violation of refusal to submit to a chemical test
618 under Section 41-6a-520; or

619 ~~[(ii)]~~ (iii) has had the person's driving privilege revoked for refusal to submit to a
620 chemical test and the refusal is within 10 years after:

621 (A) a prior refusal to submit to a chemical test under Section 41-6a-520; or

622 (B) a prior conviction for an offense described in Subsection (1)(a)(i) which is not
623 based on the same arrest as the refusal;

624 (e) at any time has been convicted of:

625 (i) automobile homicide under Section 76-5-207 for an offense that occurred on or
626 after July 1, 2005; or

627 (ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July
628 1, 2005;

629 (f) at the time of operation of a vehicle is under 21 years of age; or

630 (g) is a novice learner driver.

631 (2) For purposes of this section and Section 41-6a-530, a plea of guilty or no contest to
632 a violation described in Subsection (1)(a)(i) which plea was held in abeyance under Title 77,
633 Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if
634 the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance
635 agreement.

636 Section 9. Section 53-3-223 is amended to read:

637 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
638 **Hearing and decision -- Suspension and fee -- Judicial review.**

639 (1) (a) If a peace officer has reasonable grounds to believe that a person may be
640 violating or has violated Section 41-6a-502, prohibiting the operation of a vehicle with a
641 certain blood or breath alcohol concentration and driving under the influence of any drug,
642 alcohol, or combination of a drug and alcohol or while having any measurable controlled
643 substance or metabolite of a controlled substance in the person's body in violation of Section
644 41-6a-517, the peace officer may, in connection with arresting the person, request that the
645 person submit to a chemical test or tests to be administered in compliance with the standards
646 under Section 41-6a-520.

647 (b) In this section, a reference to Section 41-6a-502 includes any similar local

648 ordinance adopted in compliance with Subsection 41-6a-510(1).

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

654 (3) If the person submits to a chemical test and the test results indicate a blood or
655 breath alcohol content in violation of Section 41-6a-502 or 41-6a-517, or if a peace officer
656 makes a determination, based on reasonable grounds, that the person is otherwise in violation
657 of Section 41-6a-502, a peace officer shall, on behalf of the division and within 24 hours of
658 arrest, give notice of the division's intention to suspend the person's license to drive a motor
659 vehicle.

660 (4) When a peace officer gives notice on behalf of the division, the peace officer shall
661 supply to the driver, in a manner specified by the division, basic information regarding how to
662 obtain a prompt hearing before the division.

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

665 (a) a copy of the citation issued for the offense;

666 (b) a signed report in a manner specified by the division indicating the chemical test
667 results, if any; and

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

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

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

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

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

678 (ii) The division may hold a hearing in some other county if the division and the person

679 both agree.

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

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

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

684 (iii) the test results, if any.

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

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

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

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

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

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

694 (7) (a) If, after a hearing, the division determines that a peace officer had reasonable
695 grounds to believe that the person was driving a motor vehicle in violation of Section
696 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the
697 notice, or if a hearing is not requested under this section, the division shall:

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

701 (A) 120 days beginning on the 45th day after the date of arrest for a first suspension; or

702 (B) two years beginning on the 45th day after the date of arrest for a second or
703 subsequent suspension for an offense that occurred within the previous 10 years; or

704 (ii) if the person is under 21 years of age at the time of arrest and the arrest was made
705 on or after May 14, 2013:

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

707 (I) for a period of six months, beginning on the 45th day after the date of arrest for a
708 first suspension; or

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

710 beginning on the 45th day after the date of arrest for a second or subsequent suspension for an
711 offense that occurred within the previous 10 years; or

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

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

715 (II) until the person is 21 years of age or for a period of two years, whichever is longer,
716 beginning on the 45th day after the date of arrest for a second or subsequent suspension for an
717 offense that occurred within the previous 10 years.

718 (b) The division shall deny or suspend a person's license for the denial and suspension
719 periods in effect:

720 (i) prior to July 1, 2009, for an offense that was committed prior to July 1, 2009;

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

722 (A) the person was 20 years 6 months of age or older but under 21 years of age at the
723 time of arrest; and

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

726 (iii) prior to May 14, 2013, for an offense that was committed prior to May 14, 2013.

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

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

733 (B) no sooner than 60 days beginning on the 45th day after the date of arrest upon
734 receiving written verification of the person's reduction of a charge for a violation of Section
735 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the
736 suspension period.

737 (ii) Notwithstanding the provisions in Subsection (7)(a)(i)(A) or (7)(b), the division
738 shall reinstate a person's license prior to completion of the 120-day suspension period imposed
739 under Subsection (7)(a)(i)(A) immediately upon receiving written verification of the person's
740 conviction of impaired driving under Section 41-6a-502.5 if:

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

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

746 (iii) If a person's license is reinstated under this Subsection (7)(c), the person is
747 required to pay the license reinstatement fees under Subsections 53-3-105(24) and (25).

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

750 (8) (a) Notwithstanding the provisions in Subsection (7)(b)(iii), the division shall
751 shorten a person's two-year license suspension period that is currently in effect to a six-month
752 suspension period if:

753 (i) the driver was under the age of 19 at the time of arrest;

754 (ii) the offense was a first offense that was committed prior to May 14, 2013; and

755 (iii) the suspension under Subsection (7)(b)(iii) was based on the same occurrence
756 upon which the following written verifications are based:

757 (A) a court order shortening the driver license suspension for a violation of Section
758 41-6a-502 pursuant to Subsection 41-6a-509~~(8)~~(7);

759 (B) a court order shortening the driver license suspension for a violation of Section
760 41-6a-517 pursuant to Subsection 41-6a-517(11);

761 (C) a court order shortening the driver license suspension for a violation of Section
762 32B-4-409;

763 (D) a dismissal for a violation of Section 41-6a-502, Section 41-6a-517, or Section
764 32B-4-409;

765 (E) a notice of declination to prosecute for a charge under Section 41-6a-502, Section
766 41-6a-517, or Section 32B-4-409;

767 (F) a reduction of a charge under Section 41-6a-502, Section 41-6a-517, or Section
768 32B-4-409; or

769 (G) other written documentation acceptable to the division.

770 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
771 division may make rules establishing requirements for acceptable written documentation to

772 shorten a person's driver license suspension period under Subsection (8)(a)(iii)(G).

773 (c) If a person's license sanction is shortened under this Subsection (8), the person is
774 required to pay the license reinstatement fees under Subsections 53-3-105(24) and (25).

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

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

783 (10) (a) Notwithstanding the provisions in Subsection (7)(a)(i) or (ii), the division shall
784 reinstate a person's license before completion of the suspension period imposed under
785 Subsection (7)(a)(i) or (ii) if the reporting court notifies the Driver License Division that the
786 defendant is participating in or has successfully completed a 24-7 sobriety program as defined
787 in Section 41-6a-515.5.

788 (b) If a person's license is reinstated under Subsection (10)(a), the person is required to
789 pay the license reinstatement fees under Subsections 53-3-105(24) and (25).

790 Section 10. Section 53-3-231 is amended to read:

791 **53-3-231. Person under 21 may not operate a vehicle or motorboat with**
792 **detectable alcohol in body -- Chemical test procedures -- Temporary license -- Hearing**
793 **and decision -- Suspension of license or operating privilege -- Fees -- Judicial review --**
794 **Referral to local substance abuse authority or program.**

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

796 (i) "Local substance abuse authority" has the same meaning as provided in Section
797 62A-15-102.

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

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

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

806 (b) A person who violates Subsection (2)(a), in addition to any other applicable
807 penalties arising out of the incident, shall have the person's operator license denied or
808 suspended as provided in Subsection (7).

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

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

816 (c) If the person submits to a chemical test and the test results indicate a blood, breath,
817 or urine alcohol content in violation of Subsection (2)(a), or if a peace officer makes a
818 determination, based on reasonable grounds, that the person is otherwise in violation of
819 Subsection (2)(a), a peace officer shall, on behalf of the division and within 24 hours of the
820 arrest, give notice of the division's intention to deny or suspend the person's license to operate a
821 vehicle or refusal to issue a license under this section.

822 (4) When a peace officer gives notice on behalf of the division, the peace officer shall
823 supply to the operator, in a manner specified by the division, basic information regarding how
824 to obtain a prompt hearing before the division.

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

827 (a) a copy of the citation issued for the offense;

828 (b) a signed report in a manner specified by the Driver License Division indicating the
829 chemical test results, if any; and

830 (c) any other basis for a peace officer's determination that the person has violated
831 Subsection (2).

832 (6) (a) (i) Upon request in a manner specified by the division, the Driver License
833 Division shall grant to the person an opportunity to be heard within 29 days after the date of

834 arrest under Section [32B-4-409](#).

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

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

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

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

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

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

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

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

847 (iii) the test results, if any.

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

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

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

854 (7) If, after a hearing, the division determines that a peace officer had reasonable
855 grounds to believe that the person was driving a motor vehicle in violation of Subsection (2)(a),
856 if the person fails to appear before the division as required in the notice, or if the person does
857 not request a hearing under this section, the division shall for a person under 21 years of age on
858 the date of arrest:

859 (a) deny the person's license until the person complies with Subsection (11)(b)(i) but
860 for a period of not less than six months beginning on the 45th day after the date of arrest for a
861 first offense under Subsection (2)(a) committed on or after May 14, 2013;

862 (b) suspend the person's license until the person complies with Subsection (11)(b)(i)
863 and until the person is 21 years of age or for a period of two years, whichever is longer,
864 beginning on the 45th day after the date of arrest for a second or subsequent offense under

865 Subsection (2)(a) committed on or after July 1, 2009, and within 10 years of a prior denial or
866 suspension;

867 (c) deny the person's application for a license or learner's permit until the person
868 complies with Subsection (11)(b)(i) but for a period of not less than six months if:

869 (i) the person has not been issued an operator license; and

870 (ii) the suspension is for a first offense under Subsection (2)(a) committed on or after
871 July 1, 2009;

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

875 (i) the person has not been issued an operator license; and

876 (ii) the suspension is for a second or subsequent offense under Subsection (2)(a)
877 committed on or after July 1, 2009, and within 10 years of a prior denial or suspension; or

878 (e) deny or suspend a person's license for the denial and suspension periods in effect:

879 (i) prior to July 1, 2009, for a violation under Subsection (2)(a) that was committed
880 prior to July 1, 2009;

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

884 (iii) prior to May 14, 2013, for a violation under Subsection (2)(a) that was committed
885 prior to May 14, 2013.

886 (8) (a) Notwithstanding the provisions in Subsection (7)(e)(iii), the division shall
887 shorten a person's one-year license suspension or denial period that is currently in effect to a
888 six-month suspension or denial period if:

889 (i) the driver was under the age of 19 at the time of arrest;

890 (ii) the offense was a first offense that was committed prior to May 14, 2013; and

891 (iii) the suspension or denial under Subsection (7)(e)(iii) was based on the same
892 occurrence upon which the following written verifications are based:

893 (A) a court order shortening the driver license suspension for a violation of Section
894 41-6a-502 pursuant to Subsection 41-6a-509~~[(8)]~~(7);

895 (B) a court order shortening the driver license suspension for a violation of Section

896 41-6a-517 pursuant to Subsection 41-6a-517(11);

897 (C) a court order shortening the driver license suspension for a violation of Section
898 32B-4-409;

899 (D) a dismissal for a violation of Section 41-6a-502, Section 41-6a-517, or Section
900 32B-4-409;

901 (E) a notice of declination to prosecute for a charge under Section 41-6a-502, Section
902 41-6a-517, or Section 32B-4-409;

903 (F) a reduction of a charge under Section 41-6a-502, Section 41-6a-517, or Section
904 32B-4-409; or

905 (G) other written documentation acceptable to the division.

906 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
907 division may make rules establishing requirements for acceptable documentation to shorten a
908 person's driver license suspension or denial period under this Subsection (8).

909 (c) If a person's license sanction is shortened under this Subsection (8), the person is
910 required to pay the license reinstatement fees under Subsections 53-3-105(24) and (25).

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

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

917 (b) A person whose operator license has been denied, suspended, or postponed by the
918 division under this section following an administrative hearing may file a petition within 30
919 days after the suspension for a hearing on the matter which, if held, is governed by Section
920 53-3-224.

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

925 (11) (a) In addition to the penalties in Subsection (9), a person who violates Subsection
926 (2)(a) shall:

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

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

931 (b) (i) Reinstatement of the person's operator license or the right to obtain an operator
932 license within five years of the effective date of the license sanction under Subsection (7) is
933 contingent upon successful completion of the action recommended by the local substance
934 abuse authority or the substance abuse program.

935 (ii) The local substance abuse authority's or the substance abuse program's
936 recommended action shall be determined by an assessment of the person's alcohol abuse and
937 may include:

938 (A) a targeted education and prevention program;

939 (B) an early intervention program; or

940 (C) a substance abuse treatment program.

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

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

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

948 (i) conducting the assessments;

949 (ii) making appropriate recommendations for action; and

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

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

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

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

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

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

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

965 Section 11. Section **77-40-105 (Superseded 05/01/20)** is amended to read:

966 **77-40-105 (Superseded 05/01/20). Eligibility for expungement of conviction --**
967 **Requirements.**

968 (1) A person convicted of an offense may apply to the bureau for a certificate of
969 eligibility to expunge the record of conviction as provided in this section.

970 (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau if:

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

972 (i) a capital felony;

973 (ii) a first degree felony;

974 (iii) a violent felony as defined in Subsection [76-3-203.5\(1\)\(c\)\(i\)](#);

975 (iv) felony automobile homicide;

976 (v) a felony [~~violation of~~] conviction described in Subsection [41-6a-501\(2\)](#);

977 (vi) a registerable sex offense as defined in Subsection [77-41-102\(17\)](#); or

978 (vii) a registerable child abuse offense as defined in Subsection [77-43-102\(2\)](#);

979 (b) a criminal proceeding is pending against the petitioner; or

980 (c) the petitioner intentionally or knowingly provides false or misleading information
981 on the application for a certificate of eligibility.

982 (3) A petitioner seeking to obtain expungement for a record of conviction is not
983 eligible to receive a certificate of eligibility from the bureau until all of the following have
984 occurred:

985 (a) all fines and interest ordered by the court related to the conviction for which
986 expungement is sought have been paid in full;

987 (b) all restitution ordered by the court pursuant to Section [77-38a-302](#), or by the Board
988 of Pardons and Parole pursuant to Section [77-27-6](#), has been paid in full; and

989 (c) the following time periods have elapsed from the date the petitioner was convicted
990 or released from incarceration, parole, or probation, whichever occurred last, for each
991 conviction the petitioner seeks to expunge:

992 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a
993 felony conviction of Subsection 58-37-8(2)(g);

994 (ii) seven years in the case of a felony;

995 (iii) five years in the case of any class A misdemeanor or a felony drug possession
996 offense;

997 (iv) four years in the case of a class B misdemeanor; or

998 (v) three years in the case of any other misdemeanor or infraction.

999 (4) The bureau may not count pending or previous infractions, traffic offenses, or
1000 minor regulatory offenses, or fines or fees arising from the infractions, traffic offenses, or
1001 minor regulatory offenses, when determining expungement eligibility.

1002 (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner
1003 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
1004 including previously expunged convictions, contains any of the following, except as provided
1005 in Subsection (8):

1006 (a) two or more felony convictions other than for drug possession offenses, each of
1007 which is contained in a separate criminal episode;

1008 (b) any combination of three or more convictions other than for drug possession
1009 offenses that include two class A misdemeanor convictions, each of which is contained in a
1010 separate criminal episode;

1011 (c) any combination of four or more convictions other than for drug possession
1012 offenses that include three class B misdemeanor convictions, each of which is contained in a
1013 separate criminal episode; or

1014 (d) five or more convictions other than for drug possession offenses of any degree
1015 whether misdemeanor or felony, each of which is contained in a separate criminal episode.

1016 (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner
1017 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
1018 including previously expunged convictions, contains any of the following:

1019 (a) three or more felony convictions for drug possession offenses, each of which is

1020 contained in a separate criminal episode; or

1021 (b) any combination of five or more convictions for drug possession offenses, each of
1022 which is contained in a separate criminal episode.

1023 (7) If the petitioner's criminal history contains convictions for both a drug possession
1024 offense and a non drug possession offense arising from the same criminal episode, that criminal
1025 episode shall be counted as provided in Subsection (5) if any non drug possession offense in
1026 that episode:

1027 (a) is a felony or class A misdemeanor; or

1028 (b) has the same or a longer waiting period under Subsection (3) than any drug
1029 possession offense in that episode.

1030 (8) If at least 10 years have elapsed from the date the petitioner was convicted or
1031 released from incarceration, parole, or probation, whichever occurred last, for all convictions,
1032 then each eligibility limit defined in Subsection (5) shall be increased by one.

1033 (9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board
1034 of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned
1035 crimes pursuant to Section 77-27-5.1.

1036 Section 12. Section 77-40-105 (Effective 05/01/20) is amended to read:

1037 **77-40-105 (Effective 05/01/20). Requirements to apply for a certificate of**
1038 **eligibility to expunge conviction.**

1039 (1) An individual convicted of an offense may apply to the bureau for a certificate of
1040 eligibility to expunge the record of conviction as provided in this section.

1041 (2) An individual is not eligible to receive a certificate of eligibility from the bureau if:

1042 (a) the conviction for which expungement is sought is:

1043 (i) a capital felony;

1044 (ii) a first degree felony;

1045 (iii) a violent felony as defined in Subsection 76-3-203.5(1)(c)(i);

1046 (iv) felony automobile homicide;

1047 (v) a felony [~~violation of~~] conviction described in Subsection 41-6a-501(2);

1048 (vi) a registerable sex offense as defined in Subsection 77-41-102(17); or

1049 (vii) a registerable child abuse offense as defined in Subsection 77-43-102(2);

1050 (b) a criminal proceeding is pending against the petitioner; or

1051 (c) the petitioner intentionally or knowingly provides false or misleading information
1052 on the application for a certificate of eligibility.

1053 (3) A petitioner seeking to obtain expungement for a record of conviction is not
1054 eligible to receive a certificate of eligibility from the bureau until all of the following have
1055 occurred:

1056 (a) the petitioner has paid in full all fines and interest ordered by the court related to the
1057 conviction for which expungement is sought;

1058 (b) the petitioner has paid in full all restitution ordered by the court pursuant to Section
1059 77-38a-302, or by the Board of Pardons and Parole pursuant to Section 77-27-6; and

1060 (c) the following time periods have elapsed from the date the petitioner was convicted
1061 or released from incarceration, parole, or probation, whichever occurred last, for each
1062 conviction the petitioner seeks to expunge:

1063 (i) 10 years in the case of a misdemeanor conviction of Subsection 41-6a-501(2) or a
1064 felony conviction of Subsection 58-37-8(2)(g);

1065 (ii) seven years in the case of a felony;

1066 (iii) five years in the case of any class A misdemeanor or a felony drug possession
1067 offense;

1068 (iv) four years in the case of a class B misdemeanor; or

1069 (v) three years in the case of any other misdemeanor or infraction.

1070 (4) The bureau may not count pending or previous infractions, traffic offenses, or
1071 minor regulatory offenses, or fines or fees arising from the infractions, traffic offenses, or
1072 minor regulatory offenses, when determining expungement eligibility.

1073 (5) The bureau may not issue a certificate of eligibility if, at the time the petitioner
1074 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
1075 including previously expunged convictions, contains any of the following, except as provided
1076 in Subsection (8):

1077 (a) two or more felony convictions other than for drug possession offenses, each of
1078 which is contained in a separate criminal episode;

1079 (b) any combination of three or more convictions other than for drug possession
1080 offenses that include two class A misdemeanor convictions, each of which is contained in a
1081 separate criminal episode;

1082 (c) any combination of four or more convictions other than for drug possession
1083 offenses that include three class B misdemeanor convictions, each of which is contained in a
1084 separate criminal episode; or

1085 (d) five or more convictions other than for drug possession offenses of any degree
1086 whether misdemeanor or felony, each of which is contained in a separate criminal episode.

1087 (6) The bureau may not issue a certificate of eligibility if, at the time the petitioner
1088 seeks a certificate of eligibility, the bureau determines that the petitioner's criminal history,
1089 including previously expunged convictions, contains any of the following:

1090 (a) three or more felony convictions for drug possession offenses, each of which is
1091 contained in a separate criminal episode; or

1092 (b) any combination of five or more convictions for drug possession offenses, each of
1093 which is contained in a separate criminal episode.

1094 (7) If the petitioner's criminal history contains convictions for both a drug possession
1095 offense and a non drug possession offense arising from the same criminal episode, that criminal
1096 episode shall be counted as provided in Subsection (5) if any non drug possession offense in
1097 that episode:

1098 (a) is a felony or class A misdemeanor; or

1099 (b) has the same or a longer waiting period under Subsection (3) than any drug
1100 possession offense in that episode.

1101 (8) If at least 10 years have elapsed from the date the petitioner was convicted or
1102 released from incarceration, parole, or probation, whichever occurred last, for all convictions,
1103 then each eligibility limit defined in Subsection (5) shall be increased by one.

1104 (9) If, prior to May 14, 2013, the petitioner has received a pardon from the Utah Board
1105 of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned
1106 crimes pursuant to Section [77-27-5.1](#).

1107 **Section 13. Effective date.**

1108 (1) Except as provided in Subsection (2), this bill takes effect on May 12, 2020.

1109 (2) If approved by two-thirds of all the members elected to each house, Section

1110 [77-40-105](#) (Effective 05/01/20) takes effect on May 1, 2020.