

## HB0142S01 compared with HB0142

~~{deleted text}~~ shows text that was in HB0142 but was deleted in HB0142S01.

Inserted text shows text that was not in HB0142 but was inserted into HB0142S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Stephanie Pitcher proposes the following substitute bill:

### CRIMINAL PROCEEDING AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephanie Pitcher**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

#### General Description:

This bill creates ~~{certain}~~ pleading requirements for certain crimes.

#### Highlighted Provisions:

This bill:

- ▶ requires ~~{an}~~ a prosecuting attorney to ~~{be present at the pleading stage of a criminal prosecution under specified circumstances.}~~ agree in writing before a defendant may enter a plea of guilty or no contest to:
  - a domestic violence offense; or
  - driving under the influence of drugs or alcohol.

#### Money Appropriated in this Bill:

None

#### Other Special Clauses:

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None

### Utah Code Sections Affected:

~~{ENACTS:~~

~~77-13-7, Utah Code Annotated 1953}~~ AMENDS:

41-6a-513, as renumbered and amended by Laws of Utah 2005, Chapter 2

77-36-1.2, as enacted by Laws of Utah 2015, Chapter 426

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

Section 1. Section 41-6a-513 is amended to read:

**41-6a-513. Acceptance of plea of guilty to DUI -- Restrictions -- Verification of prior violations -- Prosecutor to examine defendant's record.**

(1) ~~[A court may not accept a plea of guilty or no contest to a charge under Section 41-6a-502]~~ An entry of a plea of guilty or no contest to a criminal charge under Section 41-6a-502 is invalid unless~~;~~~~{~~

~~}(a){}~~ the prosecutor agrees to the plea:

~~[(i)]~~ (a) in open court;

~~[(ii)]~~ (b) in writing; or

~~[(iii)]~~ (c) by another means of communication which the court finds adequate to record the prosecutor's agreement~~;~~~~]~~

~~[(b) the charge is filed by information as defined under Section 77-1-3; or]~~

~~[(c) the court receives verification from a law enforcement agency that the defendant's driver license record contains no record of a conviction, arrest, or charge for:]~~

~~[(i) more than one prior violation within the previous 10 years of any offense which, if the defendant were convicted, would qualify as a "conviction" as defined under Subsection 41-6a-501(2);]~~

~~[(ii) a felony violation of Section 41-6a-502; or]~~

~~[(iii) automobile homicide under Section 76-5-207.]~~

~~[(2) A verification under Subsection (1)(c) may be made by:]~~

~~[(a) a written indication on the citation;]~~

~~[(b) a separate written document; or]~~

~~[(c) any other means which the court finds adequate to record the law enforcement~~

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agency's verification.]

~~[(3)]~~ (2) (a) Prior to agreeing to a plea of guilty or no contest ~~[or to filing an information]~~ under Subsection (1), the prosecutor shall examine the criminal history or driver license record of the defendant ~~{,}~~ [-] to determine if the defendant's record contains a conviction, arrest or charge for:

(i) more than one prior violation within the previous 10 years of any offense that, if the defendant were convicted, would qualify as a conviction as defined in Subsection 41-6a-501(2);

(ii) a felony violation of Section 41-6a-502; or

(iii) automobile homicide under Section 76-5-207.

(b) If the defendant's record contains a conviction or unresolved arrest or charge for an offense listed in ~~[Subsections (1)(c)(i) through (iii)]~~ Subsection (2)(a), a plea may only be accepted if:

(i) approved by:

(A) a district attorney;

(B) a deputy district attorney;

(C) a county attorney;

(D) a deputy county attorney;

(E) the attorney general; or

(F) an assistant attorney general; and

(ii) the attorney giving approval under Subsection (3)(b)(i) has felony jurisdiction over the case.

~~[(4) A plea of guilty or no contest is not made invalid by the failure of the court, prosecutor, or law enforcement agency to comply with this section.]~~

Section ~~{1}~~ 2. Section ~~{77-13-7}~~ 77-36-1.2 is ~~{enacted}~~ amended to read:

~~{~~ 77-13-7. Requirement of an attorney.

~~—~~ {1} 77-36-1.2. Acceptance of a plea of guilty or no contest to domestic violence --  
Restrictions.

(1) For purposes of this section, "qualifying domestic violence offense" means:

(a) a domestic violence offense in Utah; or

(b) an offense in any other state, or in any district, possession, or territory of the United

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States, that would be a domestic violence offense under Utah law.

(2) For purposes of this section and Section 77-36-1.1, a plea of guilty or no contest to any domestic violence offense in Utah, which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(3) (a) Before agreeing to a plea of guilty or no contest [or to filing an information], the prosecutor shall examine the criminal history of the defendant.

[(b) The court may not accept a plea of guilty or no contest to a domestic violence offense, unless:]

[(i) (b) An entry of a plea of guilty or no contest {under Section 77-13-2 for any criminal charge that requires an appearance in court is invalid if, at the time the defendant enters the plea, one of the following is not present:

—— (a) the prosecuting attorney; or

—— (b) }to a domestic violence offense is invalid unless the prosecutor agrees to the plea:

[(A)] (i) in open court;

[(B)] (ii) in writing; or

[(C)] (iii) by another means of communication that the court finds adequate to record the prosecutor's agreement[; or].

[(ii) (A) the domestic violence offense is filed by information;]

[(B) the court receives a copy of the defendant's {counsel.

—— (2) Notwithstanding Subsection (1), a defendant may not be deprived of the right to counsel at any stage of a proceeding:

{criminal history; and]

[(C) the criminal history contains no record of a conviction or a pending charge of a qualifying domestic violence offense within five years before the date on which the plea is entered.]

[(c) A plea of guilty or no contest is not made invalid by the failure of a court, a prosecutor, or a law enforcement agency to comply with this section.]