

26 person's body that were not appropriately prescribed or recommended;

26a **H→ ▶ provides additional sentencing options for certain individuals convicted of**
 26b **driving under the influence;**

26c **▶ for purposes of sentencing, excludes from the definition of "controlled substance" an**
 26d **inactive metabolite of the controlled substance; ←H**

27 ▶ prohibits a plea in abeyance for certain offenses related to driving under the
 28 influence; and

29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

35a **H→ 41-6a-501, as last amended by Laws of Utah 2020, Chapter 177 ←H**

36 **41-6a-502.5, as last amended by Laws of Utah 2015, Chapter 438**

37 **41-6a-503, as last amended by Laws of Utah 2020, Chapter 177**

38 **41-6a-505, as last amended by Laws of Utah 2019, Chapter 136**

39 **41-6a-512, as last amended by Laws of Utah 2015, Chapter 438**

40 **77-2a-3, as last amended by Laws of Utah 2008, Chapters 3, 339, and 382**



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

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

42b 41-6a-501. Definitions.

42c (1) As used in this part:

42d (a) "Actual physical control" is determined by a consideration of the totality of the circumstances,
 42e but does not include a circumstance in which:

42f (i) the person is asleep inside the vehicle;

42g (ii) the person is not in the driver's seat of the vehicle;

42h (iii) the engine of the vehicle is not running;

42i (iv) the vehicle is lawfully parked; and

42j (v) under the facts presented, it is evident that the person did not drive the vehicle to the location
 42k while under the influence of alcohol, a drug, or the combined influence of alcohol and any drug.

42l (b) "Assessment" means an in-depth clinical interview with a licensed mental health therapist:

42m (i) used to determine if a person is in need of:⊕

- 42n ⊕(A) substance abuse treatment that is obtained at a substance abuse program;
- 42o (B) an educational series; or
- 42p (C) a combination of Subsections (1)(b)(i)(A) and (B); and
- 42q (ii) that is approved by the Division of Substance Abuse and Mental Health in accordance with
- 42r Section 62A-15-105.
- 42s (c) "Driving under the influence court" means a court that is approved as a driving under the
- 42t influence court by the Utah Judicial Council according to standards established by the Judicial Council.
- 42u (d) "Drug" or "drugs" means:
- 42v (i) a controlled substance as defined in Section 58-37-2;
- 42w (ii) a drug as defined in Section 58-17b-102; or
- 42x (iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can
- 42y impair the ability of a person to safely operate a motor vehicle.
- 42z (e) "Educational series" means an educational series obtained at a substance abuse program that is
- 42aa approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.
- 42ab (f) "Negligence" means simple negligence, the failure to exercise that degree of care that an
- 42ac ordinarily reasonable and prudent person exercises under like or similar circumstances.
- 42ad (g) "Novice learner driver" means an individual who:
- 42ae (i) has applied for a Utah driver license;
- 42af (ii) has not previously held a driver license in this state or another state; and
- 42ag (iii) has not completed the requirements for issuance of a Utah driver license.
- 42ah (h) "Screening" means a preliminary appraisal of a person:
- 42ai (i) used to determine if the person is in need of:
- 42aj (A) an assessment; or
- 42ak (B) an educational series; and
- 42al (ii) that is approved by the Division of Substance Abuse and Mental Health in accordance with
- 42am Section 62A-15-105.
- 42an (i) "Serious bodily injury" means bodily injury that creates or causes:
- 42ao (i) serious permanent disfigurement;
- 42ap (ii) protracted loss or impairment of the function of any bodily member or organ; or
- 42aq (iii) a substantial risk of death.
- 42ar (j) "Substance abuse treatment" means treatment obtained at a substance abuse program that is
- 42as approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.
- 42at (k) "Substance abuse treatment program" means a state licensed substance abuse program.
- 42au (l) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in Section
- 42av 41-6a-102; and
- 42aw (ii) "Vehicle" or "motor vehicle" includes:
- 42ax (A) an off-highway vehicle as defined under Section 41-22-2; and
- 42ay (B) a motorboat as defined in Section 73-18-2.⊕

- 42az ⊕(2) As used in Section 41-6a-503:
- 42ba (a) "Conviction" means any conviction arising from a separate episode of driving for a violation of:
- 42bb (i) driving under the influence under Section 41-6a-502;
- 42bc (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a combination of
- 42bd both-related reckless driving under:
- 42be (I) Section 41-6a-512; and
- 42bf (II) Section 41-6a-528; or
- 42bg (B) for an offense committed on or after July 1, 2008, impaired driving under Section 41-6a-502.5;
- 42bh (iii) driving with any measurable controlled substance that is taken illegally in the body under
- 42bi Section 41-6a-517;
- 42bj (iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination of
- 42bk both-related reckless driving, or impaired driving under Section 41-6a-502.5 adopted in compliance with
- 42bl Section 41-6a-510;
- 42bm (v) automobile homicide under Section 76-5-207;
- 42bn (vi) Subsection 58-37-8(2)(g);
- 42bo (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of conviction is
- 42bp reduced under Section 76-3-402;
- 42bq (viii) refusal of a chemical test under Subsection 41-6a-520(7); or
- 42br (ix) statutes or ordinances previously in effect in this state or in effect in any other state, the United
- 42bs States, or any district, possession, or territory of the United States which would constitute a violation of
- 42bt Section 41-6a-502 or alcohol, any drug, or a combination of both-related reckless driving if committed in this
- 42bu state, including punishments administered under 10 U.S.C. Sec. 815.
- 42bv (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i) through (ix) which
- 42bw plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the
- 42bx equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with
- 42by the plea in abeyance agreement, for purposes of:
- 42bz (i) enhancement of penalties under:
- 42ca (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and
- 42cb (B) automobile homicide under Section 76-5-207; and
- 42cc (ii) expungement under Title 77, Chapter 40, Utah Expungement Act.
- 42cd (c) An admission to a violation of Section 41-6a-502 in juvenile court is the equivalent of a
- 42ce conviction even if the charge has been subsequently dismissed in accordance with the Utah Rules of Juvenile
- 42cf Procedure for the purposes of enhancement of penalties under:
- 42cg (i) this part; and
- 42ch (ii) automobile homicide under Section 76-5-207.
- 42ci **(3) As used in Section 41-6a-505, "controlled substance" does not include an inactive**
- 42cj **metabolite of a controlled substance.** ←Ⓜ ⊕

43 ⊕ Section 1. Section **41-6a-502.5** is amended to read:

44 **41-6a-502.5. Impaired driving -- Penalty -- Reporting of convictions -- Sentencing**
45 **requirements.**

46 (1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of
47 Section 41-6a-502 committed on or after July 1, 2008, may be entered as a conviction of
48 impaired driving under this section if:

49 (a) the defendant completes court ordered probation requirements; or

50 (b) (i) the prosecutor agrees as part of a negotiated plea; and

51 (ii) the court finds the plea to be in the interest of justice.

52 (2) A conviction entered under this section is a class B misdemeanor.

53 (3) (a) (i) If the entry of an impaired driving plea is based on successful completion of
54 probation under Subsection (1)(a), the court shall enter the conviction at the time of the plea.

55 (ii) If the defendant fails to appear before the court and establish successful completion
56 of the court ordered probation requirements under Subsection (1)(a), the court shall enter an

212 ~~[(2)]~~ (5) If an individual has a prior conviction as defined in Subsection 41-6a-501(2)
 213 that is within 10 years of the current conviction under Section 41-6a-502 or the commission of
 214 the offense upon which the current conviction is based and where there is admissible evidence
 215 that the individual had a blood alcohol level of .16 or higher, had a blood alcohol level of .05 or
 216 higher in addition to any measurable controlled substance, or had a combination of two or more
 217 controlled substances in the individual's body that were not recommended in accordance with
 218 Title 26, Chapter 61a, Utah Medical Cannabis Act or prescribed:

219 (a) the court shall:

220 (i) (A) impose a jail sentence of not less than ~~[240 hours]~~ 20 days; ~~H→~~ [or] ~~←H~~

221 (B) impose a jail sentence of not less than ~~[120 hours]~~ 10 days in addition to home
 222 confinement of not fewer than ~~[720 consecutive hours]~~ 60 consecutive days through the use of
 223 electronic monitoring that includes a substance abuse testing instrument in accordance with
 224 Section 41-6a-506; ~~H→~~ or

224a **(C) impose a jail sentence of not less than 10 days in addition to ordering the individual**
 224b **to obtain substance abuse treatment, if the court finds that substance abuse treatment is more**
 224c **likely to reduce recidivism and is in the interests of public safety;** ~~←H~~

225 (ii) order the individual to participate in a screening;

226 (iii) order the individual to participate in an assessment, if it is found appropriate by a
 227 screening under Subsection ~~[(2)]~~ (5)(a)(ii);

228 (iv) order the individual to participate in an educational series if the court does not
 229 order substance abuse treatment as described under Subsection ~~[(2)]~~ (5)(b);

230 (v) impose a fine of not less than \$800;

231 (vi) order probation for the individual in accordance with Section 41-6a-507;

232 (vii) (A) order the individual to pay the administrative impound fee described in
 233 Section 41-6a-1406; or

234 (B) if the administrative impound fee was paid by a party described in Subsection
 235 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
 236 reimburse the party; or

237 (viii) (A) order the individual to pay the towing and storage fees described in Section
 238 72-9-603; or

239 (B) if the towing and storage fees were paid by a party described in Subsection
 240 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
 241 reimburse the party; and

242 (b) the court may:

305 electronic monitoring that includes a substance abuse testing instrument in accordance with
 306 Section 41-6a-506; and

307 ~~[(c)]~~ (d) supervised probation.

308 ~~[(4)]~~ (10) (a) For Subsection ~~[(3)]~~ (9) or Subsection 41-6a-503(2)(b), the court:

309 ~~[(a)]~~ (i) shall impose an order requiring the individual to obtain a screening and
 310 assessment for alcohol and substance abuse, and treatment as appropriate; and

311 ~~[(b)]~~ (ii) may impose an order requiring the individual to participate in a ~~[24-7]~~ 24/7
 312 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years ~~[of age]~~ old or
 313 older.

314 (b) If an individual described in Subsection (10)(a)(ii) fails to successfully complete all
 315 of the requirements of the 24/7 sobriety program, the court shall impose the suspended prison
 316 sentence described in Subsection (9).

317 ~~[(5) The requirements of Subsections (1)(a), (2)(a), (3), and (4) may not be suspended.]~~

318 (11) Under Subsection 41-6a-503(2), if the court suspends the execution of a prison
 319 sentence and places the defendant on probation with a sentence not described in Subsection (9),
 320 the court shall impose:

321 (a) a fine of not less than \$1,500;

322 (b) a jail sentence of not less than 60 days;

323 (c) home confinement of not fewer than 60 consecutive days through the use of
 324 electronic monitoring that includes a substance abuse testing instrument in accordance with
 325 Section 41-6a-506; and

326 (d) supervised probation.

327 (12) (a) (i) Except as described in Subsection (12)(a)(ii), a court may not suspend the
 328 requirements of this section.

329 (ii) A court may suspend requirements as described in Subsection (2), (4), (6), (8),
 330 (10)(b) or (11).

331 (b) A court ~~H→~~ [or jail may not] , with stipulation of both parties and approval from the
 331a judge, may ~~←H~~ convert a jail sentence required in this section to electronic
 332 home confinement.

332a ~~H→~~ (c) A court may order a jail sentence imposed as a condition of misdemeanor
 332b probation under this section to be served in multiple two-day increments at weekly intervals if
 332c the court determines that separate jail increments are necessary to ensure the defendant can
 332d serve the statutorily required jail term and maintain employment. ~~←H~~

333 ~~[(6)]~~ (13) If an individual is convicted of a violation of Section 41-6a-502 and there is
 334 admissible evidence that the individual had a blood alcohol level of .16 or higher, the court
 335 shall order the following, or describe on record why the order or orders are not appropriate: