

Representative Steve Eliason proposes the following substitute bill:

DRIVING UNDER THE INFLUENCE SENTENCING

AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions related to penalties for driving under the influence and related offenses.

Highlighted Provisions:

This bill:

- ▶ prohibits sentencing reductions for driving under the influence related offenses in certain circumstances;
- ▶ requires reinstatement of certain sentences if an individual fails to complete certain requirements of an approved 24/7 sobriety program;
- ▶ creates a separate offense for each person in a vehicle that is under 16 years old when the driver is operating the vehicle while under the influence of drugs or alcohol;
- ▶ prohibits an impaired driving reduction if:
 - the person had a blood alcohol level of .16 or higher;
 - the person had a blood alcohol level of .05 or higher in addition to any measurable controlled substance in the person's body; or
 - the person had a combination of two or more controlled substances in the



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.** ←Ĥ ☛

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

57 amended conviction of Section 41-6a-502.

58 (iii) The date of entry of the amended order under Subsection (3)(a)(ii) is the date of
59 conviction.

60 (b) The court may enter a conviction of impaired driving immediately under
61 Subsection (1)(b).

62 (4) For purposes of Section 76-3-402, the entry of a plea to a class B misdemeanor
63 violation of Section 41-6a-502 as impaired driving under this section is a reduction of one
64 degree.

65 (5) (a) The court shall notify the Driver License Division of each conviction entered
66 under this section.

67 (b) Beginning on July 1, 2012, a court shall, monthly, send to the Division of
68 Occupational and Professional Licensing, created in Section 58-1-103, a report containing the
69 name, case number, and, if known, the date of birth of each person convicted during the
70 preceding month of a violation of this section for whom there is evidence that the person was
71 driving while impaired, in whole or in part, by a prescribed controlled substance.

72 (6) (a) The provisions in Subsections [~~41-6a-505(1), (2), and (4)~~] 41-6a-505(1), (3),
73 (5), and (7) that require a sentencing court to order a convicted person to participate in a
74 screening, an assessment, or an educational series, or obtain substance abuse treatment or do a
75 combination of those things, apply to a conviction entered under this section.

76 (b) The court shall render the same order regarding screening, assessment, an
77 educational series, or substance abuse treatment in connection with a first, second, or
78 subsequent conviction under this section as the court would render in connection with applying
79 respectively, the first, second, or subsequent conviction requirements of [Subsection]
80 Subsections [~~41-6a-505(1), (2), or (4)~~] 41-6a-505(1), (3), (5), and (7).

81 (7) (a) Except as provided in Subsection (7)(b), a report authorized by Section
82 53-3-104 may not contain any evidence of a conviction for impaired driving in this state if the
83 reporting court notifies the Driver License Division that the defendant is participating in or has
84 successfully completed the program of a driving under the influence court.

85 (b) The provisions of Subsection (7)(a) do not apply to a report concerning:

86 (i) a CDL license holder; or

87 (ii) a violation that occurred in a commercial motor vehicle.

- 88 (8) The provisions of this section are not available;
- 89 (a) to a person who has a prior conviction as that term is defined in Subsection
- 90 41-6a-501(2); or
- 91 (b) where there is admissible evidence that the individual:
- 92 (i) had a blood alcohol level of .16 or higher;
- 93 (ii) had a blood alcohol level of .05 or higher in addition to any measurable controlled
- 94 substance; or
- 95 (iii) had a combination of two or more controlled substances in the person's body that
- 96 were not:
- 97 (A) prescribed by a licensed physician; or
- 98 (B) recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis
- 99 Act.

100 Section 2. Section **41-6a-503** is amended to read:

101 **41-6a-503. Penalties for driving under the influence violations.**

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

- 103 (a) class B misdemeanor; or
- 104 (b) class A misdemeanor if the person:
- 105 (i) has also inflicted bodily injury upon another as a proximate result of having
- 106 operated the vehicle in a negligent manner;
- 107 (ii) had a passenger under 16 years of age in the vehicle at the time of the offense;
- 108 (iii) was 21 years of age or older and had a passenger under 18 years of age in the
- 109 vehicle at the time of the offense; or
- 110 (iv) at the time of the violation of Section **41-6a-502**, also violated Section **41-6a-712**
- 111 or **41-6a-714**.

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

- 113 (a) the person has also inflicted serious bodily injury upon another as a proximate
- 114 result of having operated the vehicle in a negligent manner;
- 115 (b) the person has two or more prior convictions as defined in Subsection
- 116 **41-6a-501(2)**, each of which is within 10 years of:
- 117 (i) the current conviction under Section **41-6a-502**; or
- 118 (ii) the commission of the offense upon which the current conviction is based; or

119 (c) the conviction under Section 41-6a-502 is at any time after a conviction of:
120 (i) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;
121 (ii) a felony violation of Section 41-6a-502 or a statute previously in effect in this state
122 that would constitute a violation of Section 41-6a-502 that is committed after July 1, 2001; or
123 (iii) any conviction described in Subsection (2)(c)(i) or (ii) which judgment of
124 conviction is reduced under Section 76-3-402.

125 (3) A person is guilty of a separate offense for each victim suffering bodily injury or
126 serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a
127 result of the person's violation of Section 76-5-207 whether or not the injuries arise from the
128 same episode of driving.

129 (4) A person is guilty of a separate offense under Subsection (1)(b)(ii) for each
130 passenger in the vehicle at the time of the offense that is under 16 years old.

131 Section 3. Section 41-6a-505 is amended to read:

132 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**
133 **drugs, or a combination of both violations.**

134 (1) As part of any sentence for a first conviction of Section 41-6a-502 where there is
135 admissible evidence that the individual had a blood alcohol level of .16 or higher, had a blood
136 alcohol level of .05 or higher in addition to any measurable controlled substance, or had a
137 combination of two or more controlled substances in the individual's body that were not
138 recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act or
139 prescribed:

140 (a) the court shall:

141 (i) (A) impose a jail sentence of not less than ~~[48 consecutive hours]~~ five days; or

142 (B) ~~[require the individual to work in a compensatory-service work program for not~~
143 ~~less than 48 hours;]~~ impose a jail sentence of not less than two days in addition to home
144 confinement of not fewer than 30 consecutive days through the use of electronic monitoring
145 that includes a substance abuse testing instrument in accordance with Section 41-6a-506;

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

147 (iii) order the individual to participate in an assessment, if it is found appropriate by a
148 screening under Subsection (1)(a)(ii);

149 (iv) order the individual to participate in an educational series if the court does not

150 order substance abuse treatment as described under Subsection (1)(b);

151 (v) impose a fine of not less than \$700;

152 (vi) order probation for the individual in accordance with Section 41-6a-507~~[, if there~~
153 ~~is admissible evidence that the individual had a blood alcohol level of .16 or higher];~~

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

156 (B) if the administrative impound fee was paid by a party described in Subsection
157 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
158 reimburse the party; or

159 (viii) (A) order the individual to pay the towing and storage fees described in Section
160 72-9-603; or

161 (B) if the towing and storage fees were paid by a party described in Subsection
162 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
163 reimburse the party; and

164 (b) the court may:

165 (i) order the individual to obtain substance abuse treatment if the substance abuse
166 treatment program determines that substance abuse treatment is appropriate;

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

168 (iii) order the individual to participate in a ~~[24-7]~~ 24/7 sobriety program as defined in
169 Section 41-6a-515.5 if the individual is 21 years ~~[of age]~~ old or older; or

170 (iv) order a combination of Subsections (1)(b)(i) through (iii).

171 (2) (a) If an individual described in Subsection (1) is participating in a 24/7 sobriety
172 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed
173 under Subsection (1)(a).

174 (b) If an individual described in Subsection (1) fails to successfully complete all of the
175 requirements of the 24/7 sobriety program, the court shall impose the suspended jail sentence
176 described in Subsection (2)(a).

177 (3) As part of any sentence for any first conviction of Section 41-6a-502 not described
178 in Subsection (1):

179 (a) the court shall:

180 (i) (A) impose a jail sentence of not less than 2 days; or

181 (B) require the individual to work in a compensatory-service work program for not less
182 than 48 hours;

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

184 (iii) order the individual to participate in an assessment, if it is found appropriate by a
185 screening under Subsection (3)(a)(ii);

186 (iv) order the individual to participate in an educational series if the court does not
187 order substance abuse treatment as described under Subsection (3)(b);

188 (v) impose a fine of not less than \$700;

189 (vi) (A) order the individual to pay the administrative impound fee described in Section
190 41-6a-1406; or

191 (B) if the administrative impound fee was paid by a party described in Subsection
192 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
193 reimburse the party; or

194 (vii) (A) order the individual to pay the towing and storage fees described in Section
195 72-9-603; or

196 (B) if the towing and storage fees were paid by a party described in Subsection
197 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
198 reimburse the party; and

199 (b) the court may:

200 (i) order the individual to obtain substance abuse treatment if the substance abuse
201 treatment program determines that substance abuse treatment is appropriate;

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

203 (iii) order the individual to participate in a 24/7 sobriety program as defined in Section
204 41-6a-515.5 if the individual is 21 years old or older; or

205 (iv) order a combination of Subsections (3)(b)(i) through (iii).

206 (4) (a) If an individual described in Subsection (3) is participating in a 24/7 sobriety
207 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed
208 under Subsection (3)(a).

209 (b) If an individual described in Subsection (4)(a) fails to successfully complete all of
210 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail
211 sentence described in Subsection (4)(a).

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; ~~Ĥ→~~ ~~[or]~~ ~~←Ĥ~~

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; ~~Ĥ→~~ 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;** ~~←Ĥ~~

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:

243 (i) order the individual to obtain substance abuse treatment if the substance abuse
244 treatment program determines that substance abuse treatment is appropriate;

245 (ii) order the individual to participate in a ~~[24-7]~~ 24/7 sobriety program as defined in
246 Section [41-6a-515.5](#) if the individual is 21 years ~~[of age]~~ old or older; or

247 (iii) order a combination of Subsections ~~[(2)]~~ (5)(b)(i) and (ii).

248 (6) (a) If an individual described in Subsection (5) is participating in a 24/7 sobriety
249 program as defined in Section [41-6a-515.5](#), the court may suspend the jail sentence imposed
250 under Subsection (5)(a) after the individual has served a minimum of:

251 (i) five days of the jail sentence for a second offense; or

252 (ii) 10 days of the jail sentence for a third or subsequent offense.

253 (b) If an individual described in Subsection (6)(a) fails to successfully complete all of
254 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail
255 sentence described in Subsection (6)(a).

256 (7) If an individual has a prior conviction as defined in Subsection [41-6a-501\(2\)](#) that is
257 within 10 years of the current conviction under Section [41-6a-502](#) or the commission of the
258 offense upon which the current conviction is based and that does not qualify under Subsection
259 (5):

260 (a) the court shall:

261 (i) (A) impose a jail sentence of not less than 10 days; or

262 (B) impose a jail sentence of not less than 5 days in addition to home confinement of
263 not fewer than 30 consecutive days through the use of electronic monitoring that includes a
264 substance abuse testing instrument in accordance with Section [41-6a-506](#);

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

266 (iii) order the individual to participate in an assessment, if it is found appropriate by a
267 screening under Subsection (7)(a)(ii);

268 (iv) order the individual to participate in an educational series if the court does not
269 order substance abuse treatment as described under Subsection (7)(b);

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

271 (vi) order probation for the individual in accordance with Section [41-6a-507](#);

272 (vii) (A) order the individual to pay the administrative impound fee described in
273 Section [41-6a-1406](#); or

274 (B) if the administrative impound fee was paid by a party described in Subsection
275 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
276 reimburse the party; or

277 (viii) (A) order the individual to pay the towing and storage fees described in Section
278 72-9-603; or

279 (B) if the towing and storage fees were paid by a party described in Subsection
280 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
281 reimburse the party; and

282 (b) the court may:

283 (i) order the individual to obtain substance abuse treatment if the substance abuse
284 treatment program determines that substance abuse treatment is appropriate;

285 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section
286 41-6a-515.5 if the individual is 21 years old or older; or

287 (iii) order a combination of Subsections (7)(b)(i) and (ii).

288 (8) (a) If an individual described in Subsection (7) is participating in a 24/7 sobriety
289 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed
290 under Subsection (7)(a) after the individual has served a minimum of:

291 (i) five days of the jail sentence for a second offense; or

292 (ii) 10 days of the jail sentence for a third or subsequent offense.

293 (b) If an individual described in Subsection (8)(a) fails to successfully complete all of
294 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail
295 sentence described in Subsection (8)(a).

296 [~~(3)~~] (9) Under Subsection 41-6a-503(2), if the court suspends the execution of a
297 prison sentence and places the defendant on probation where there is admissible evidence that
298 the individual had a blood alcohol level of .16 or higher, had a blood alcohol level of .05 in
299 addition to any measurable controlled substance, or had a combination of two or more
300 controlled substances in the person's body that were not recommended in accordance with Title
301 26, Chapter 61a, Utah Medical Cannabis Act or prescribed, the court shall impose:

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

303 (b) a jail sentence of not less than [~~1,500 hours~~] 120 days; [~~and~~]

304 (c) home confinement of not fewer than 120 consecutive days through the use of

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:

336 (a) treatment as described under Subsection (1)(b), [~~(2)(b), or (4)~~] (3)(b), (5)(b), or
337 (7)(b); and

338 (b) one or more of the following:

339 (i) the installation of an ignition interlock system as a condition of probation for the
340 individual in accordance with Section 41-6a-518;

341 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring
342 device as a condition of probation for the individual; or

343 (iii) the imposition of home confinement through the use of electronic monitoring in
344 accordance with Section 41-6a-506.

345 Section 4. Section 41-6a-512 is amended to read:

346 **41-6a-512. Factual basis for alcohol or drug-related reckless driving plea.**

347 (1) (a) The prosecution shall state for the record a factual basis for a plea, including
348 whether or not there had been consumption of alcohol, drugs, or a combination of both, by the
349 defendant in connection with the violation when the prosecution agrees to a plea of guilty or no
350 contest to a charge of a violation of the following in satisfaction of, or as a substitute for, an
351 original charge of a violation of Section 41-6a-502 for an offense committed before July 1,
352 2008:

353 (i) reckless driving under Section 41-6a-528; or

354 (ii) an ordinance enacted under Section 41-6a-510.

355 (b) The statement under Subsection (1)(a) is an offer of proof of the facts that shows
356 whether there was consumption of alcohol, drugs, or a combination of both, by the defendant,
357 in connection with the violation.

358 (2) The court shall advise the defendant before accepting the plea offered under this
359 section of the consequences of a violation of Section 41-6a-528.

360 (3) The court shall notify the Driver License Division of each conviction of Section
361 41-6a-528 entered under this section.

362 (4) (a) The provisions in Subsections [~~41-6a-505(1), (2), and (4)~~] 41-6a-505(1), (3),
363 (5), and (7) that require a sentencing court to order a convicted person to participate in a
364 screening, an assessment, or an educational series or obtain substance abuse treatment or do a
365 combination of those things, apply to a conviction for a violation of Section 41-6a-528 under
366 Subsection (1).

367 (b) The court shall render the same order regarding screening, assessment, an
368 educational series, or substance abuse treatment in connection with a first, second, or
369 subsequent conviction under Section [41-6a-528](#) under Subsection (1), as the court would
370 render in connection with applying respectively, the first, second, or subsequent conviction
371 requirements of Subsections [~~[41-6a-505\(1\), \(2\), and \(4\)](#)~~] [41-6a-505\(1\), \(3\), \(5\), and \(7\)](#).

372 Section 5. Section **77-2a-3** is amended to read:

373 **77-2a-3. Manner of entry of plea -- Powers of court.**

374 (1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be
375 done in full compliance with the provisions of Rule 11, Utah Rules of Criminal Procedure.

376 (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance
377 agreement may be entered into without a personal appearance before a magistrate.

378 (2) A plea in abeyance agreement may provide that the court may, upon finding that the
379 defendant has successfully completed the terms of the agreement:

380 (a) reduce the degree of the offense and enter judgment of conviction and impose
381 sentence for a lower degree of offense; or

382 (b) allow withdrawal of defendant's plea and order the dismissal of the case.

383 (3) Upon finding that a defendant has successfully completed the terms of a plea in
384 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as
385 provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a
386 defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not
387 invoke Section [76-3-402](#) to further reduce the degree of the offense.

388 (4) The court may require the Department of Corrections to assist in the administration
389 of the plea in abeyance agreement as if the defendant were on probation to the court under
390 Section [77-18-1](#).

391 (5) The terms of a plea in abeyance agreement may include:

392 (a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a
393 surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in
394 the same manner as if paid as a fine for a criminal conviction under Section [78A-5-110](#) and a
395 surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and
396 which may not exceed in amount the maximum fine and surcharge which could have been
397 imposed upon conviction and sentencing for the same offense;

398 (b) an order that the defendant pay restitution to the victims of the defendant's actions
399 as provided in Title 77, Chapter 38a, Crime Victims Restitution Act;

400 (c) an order that the defendant pay the costs of any remedial or rehabilitative program
401 required by the terms of the agreement; and

402 (d) an order that the defendant comply with any other conditions which could have
403 been imposed as conditions of probation upon conviction and sentencing for the same offense.

404 (6) A court may not hold a plea in abeyance without the consent of both the
405 prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a
406 plea in abeyance is final.

407 (7) No plea may be held in abeyance in any case involving a sexual offense against a
408 victim who is under the age of 14.

409 (8) [~~Beginning on July 1, 2008, no~~] No plea may be held in abeyance in any case
410 involving a driving under the influence violation under Section [41-6a-502](#), [41-6a-502.5](#),
411 [41-6a-517](#), or [41-6a-520](#).