

1 **DRIVING UNDER THE INFLUENCE SENTENCING**
2 **AMENDMENTS**

3 2021 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Steve Eliason**

6 Senate Sponsor: Curtis S. Bramble

7 Cosponsor:

8 Matthew H. Gwynn

9
10 **LONG TITLE**

11 **General Description:**

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

14 **Highlighted Provisions:**

15 This bill:

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

- 28 person's body that were not appropriately prescribed or recommended;
- 29 ▶ provides additional sentencing options for certain individuals convicted of driving
- 30 under the influence;
- 31 ▶ for purposes of sentencing, excludes from the definition of "controlled substance"
- 32 an inactive metabolite of the controlled substance;
- 33 ▶ prohibits a plea in abeyance for certain offenses related to driving under the
- 34 influence; and
- 35 ▶ makes technical changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

42 **41-6a-501**, as last amended by Laws of Utah 2020, Chapter 177

43 **41-6a-502.5**, as last amended by Laws of Utah 2015, Chapter 438

44 **41-6a-503**, as last amended by Laws of Utah 2020, Chapter 177

45 **41-6a-505**, as last amended by Laws of Utah 2019, Chapter 136

46 **41-6a-512**, as last amended by Laws of Utah 2015, Chapter 438

47 **77-2a-3**, as last amended by Laws of Utah 2008, Chapters 3, 339, and 382



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

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

51 **41-6a-501. Definitions.**

52 (1) As used in this part:

53 (a) "Actual physical control" is determined by a consideration of the totality of the

54 circumstances, but does not include a circumstance in which:

55 (i) the person is asleep inside the vehicle;
56 (ii) the person is not in the driver's seat of the vehicle;
57 (iii) the engine of the vehicle is not running;
58 (iv) the vehicle is lawfully parked; and
59 (v) under the facts presented, it is evident that the person did not drive the vehicle to
60 the location while under the influence of alcohol, a drug, or the combined influence of alcohol
61 and any drug.

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

64 (i) used to determine if a person is in need of:
65 (A) substance abuse treatment that is obtained at a substance abuse program;
66 (B) an educational series; or
67 (C) a combination of Subsections (1)(b)(i)(A) and (B); and
68 (ii) that is approved by the Division of Substance Abuse and Mental Health in
69 accordance with Section [62A-15-105](#).

70 (c) "Driving under the influence court" means a court that is approved as a driving
71 under the influence court by the Utah Judicial Council according to standards established by
72 the Judicial Council.

73 (d) "Drug" or "drugs" means:
74 (i) a controlled substance as defined in Section [58-37-2](#);
75 (ii) a drug as defined in Section [58-17b-102](#); or
76 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the
77 human body, can impair the ability of a person to safely operate a motor vehicle.

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

81 (f) "Negligence" means simple negligence, the failure to exercise that degree of care

82 that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

83 (g) "Novice learner driver" means an individual who:

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

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

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

87 (h) "Screening" means a preliminary appraisal of a person:

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

89 (A) an assessment; or

90 (B) an educational series; and

91 (ii) that is approved by the Division of Substance Abuse and Mental Health in

92 accordance with Section [62A-15-105](#).

93 (i) "Serious bodily injury" means bodily injury that creates or causes:

94 (i) serious permanent disfigurement;

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

96 (iii) a substantial risk of death.

97 (j) "Substance abuse treatment" means treatment obtained at a substance abuse

98 program that is approved by the Division of Substance Abuse and Mental Health in accordance

99 with Section [62A-15-105](#).

100 (k) "Substance abuse treatment program" means a state licensed substance abuse

101 program.

102 (l) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in

103 Section [41-6a-102](#); and

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

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

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

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

108 (a) "Conviction" means any conviction arising from a separate episode of driving for a

109 violation of:

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

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

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

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

115 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
116 41-6a-502.5;

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

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

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

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

124 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of
125 conviction is reduced under Section 76-3-402;

126 (viii) refusal of a chemical test under Subsection 41-6a-520(7); or

127 (ix) statutes or ordinances previously in effect in this state or in effect in any other
128 state, the United States, or any district, possession, or territory of the United States which
129 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
130 both-related reckless driving if committed in this state, including punishments administered
131 under 10 U.S.C. Sec. 815.

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

- 136 (i) enhancement of penalties under:
- 137 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and
- 138 (B) automobile homicide under Section 76-5-207; and
- 139 (ii) expungement under Title 77, Chapter 40, Utah Expungement Act.
- 140 (c) An admission to a violation of Section 41-6a-502 in juvenile court is the equivalent
- 141 of a conviction even if the charge has been subsequently dismissed in accordance with the Utah
- 142 Rules of Juvenile Procedure for the purposes of enhancement of penalties under:
- 143 (i) this part; and
- 144 (ii) automobile homicide under Section 76-5-207.
- 145 (3) As used in Section 41-6a-505, "controlled substance" does not include an inactive
- 146 metabolite of a controlled substance.

147 Section 2. Section 41-6a-502.5 is amended to read:

148 **41-6a-502.5. Impaired driving -- Penalty -- Reporting of convictions -- Sentencing**

149 **requirements.**

150 (1) With the agreement of the prosecutor, a plea to a class B misdemeanor violation of

151 Section 41-6a-502 committed on or after July 1, 2008, may be entered as a conviction of

152 impaired driving under this section if:

- 153 (a) the defendant completes court ordered probation requirements; or
- 154 (b) (i) the prosecutor agrees as part of a negotiated plea; and
- 155 (ii) the court finds the plea to be in the interest of justice.

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

157 (3) (a) (i) If the entry of an impaired driving plea is based on successful completion of

158 probation under Subsection (1)(a), the court shall enter the conviction at the time of the plea.

159 (ii) If the defendant fails to appear before the court and establish successful completion

160 of the court ordered probation requirements under Subsection (1)(a), the court shall enter an

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

162 (iii) The date of entry of the amended order under Subsection (3)(a)(ii) is the date of

163 conviction.

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

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

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

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

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

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

185 (7) (a) Except as provided in Subsection (7)(b), a report authorized by Section
186 53-3-104 may not contain any evidence of a conviction for impaired driving in this state if the
187 reporting court notifies the Driver License Division that the defendant is participating in or has
188 successfully completed the program of a driving under the influence court.

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

- 190 (i) a CDL license holder; or
- 191 (ii) a violation that occurred in a commercial motor vehicle.
- 192 (8) The provisions of this section are not available:
- 193 (a) to a person who has a prior conviction as that term is defined in Subsection
- 194 [41-6a-501\(2\)](#)[-]; or
- 195 (b) where there is admissible evidence that the individual:
- 196 (i) had a blood alcohol level of .16 or higher;
- 197 (ii) had a blood alcohol level of .05 or higher in addition to any measurable controlled
- 198 substance; or
- 199 (iii) had a combination of two or more controlled substances in the person's body that
- 200 were not:
- 201 (A) prescribed by a licensed physician; or
- 202 (B) recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis
- 203 Act.
- 204 Section 3. Section **41-6a-503** is amended to read:
- 205 **41-6a-503. Penalties for driving under the influence violations.**
- 206 (1) A person who violates for the first or second time Section [41-6a-502](#) is guilty of a:
- 207 (a) class B misdemeanor; or
- 208 (b) class A misdemeanor if the person:
- 209 (i) has also inflicted bodily injury upon another as a proximate result of having
- 210 operated the vehicle in a negligent manner;
- 211 (ii) had a passenger under 16 years of age in the vehicle at the time of the offense;
- 212 (iii) was 21 years of age or older and had a passenger under 18 years of age in the
- 213 vehicle at the time of the offense; or
- 214 (iv) at the time of the violation of Section [41-6a-502](#), also violated Section [41-6a-712](#)
- 215 or [41-6a-714](#).
- 216 (2) A person who violates Section [41-6a-502](#) is guilty of a third degree felony if:

217 (a) the person has also inflicted serious bodily injury upon another as a proximate
218 result of having operated the vehicle in a negligent manner;

219 (b) the person has two or more prior convictions as defined in Subsection
220 41-6a-501(2), each of which is within 10 years of:

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

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

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

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

225 (ii) a felony violation of Section 41-6a-502 or a statute previously in effect in this state
226 that would constitute a violation of Section 41-6a-502 that is committed after July 1, 2001; or

227 (iii) any conviction described in Subsection (2)(c)(i) or (ii) which judgment of
228 conviction is reduced under Section 76-3-402.

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

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

235 Section 4. Section 41-6a-505 is amended to read:

236 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**
237 **drugs, or a combination of both violations.**

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

- 244 (a) the court shall:
- 245 (i) (A) impose a jail sentence of not less than ~~[48 consecutive hours]~~ five days; or
- 246 (B) ~~[require the individual to work in a compensatory-service work program for not~~
- 247 ~~less than 48 hours;]~~ impose a jail sentence of not less than two days in addition to home
- 248 confinement of not fewer than 30 consecutive days through the use of electronic monitoring
- 249 that includes a substance abuse testing instrument in accordance with Section [41-6a-506](#);
- 250 (ii) order the individual to participate in a screening;
- 251 (iii) order the individual to participate in an assessment, if it is found appropriate by a
- 252 screening under Subsection (1)(a)(ii);
- 253 (iv) order the individual to participate in an educational series if the court does not
- 254 order substance abuse treatment as described under Subsection (1)(b);
- 255 (v) impose a fine of not less than \$700;
- 256 (vi) order probation for the individual in accordance with Section [41-6a-507](#) ~~[, if there~~
- 257 ~~is admissible evidence that the individual had a blood alcohol level of .16 or higher];~~
- 258 (vii) (A) order the individual to pay the administrative impound fee described in
- 259 Section [41-6a-1406](#); or
- 260 (B) if the administrative impound fee was paid by a party described in Subsection
- 261 [41-6a-1406\(5\)\(a\)](#), other than the individual sentenced, order the individual sentenced to
- 262 reimburse the party; or
- 263 (viii) (A) order the individual to pay the towing and storage fees described in Section
- 264 [72-9-603](#); or
- 265 (B) if the towing and storage fees were paid by a party described in Subsection
- 266 [41-6a-1406\(5\)\(a\)](#), other than the individual sentenced, order the individual sentenced to
- 267 reimburse the party; and
- 268 (b) the court may:
- 269 (i) order the individual to obtain substance abuse treatment if the substance abuse
- 270 treatment program determines that substance abuse treatment is appropriate;

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

272 (iii) order the individual to participate in a ~~[24-7]~~ 24/7 sobriety program as defined in

273 Section [41-6a-515.5](#) if the individual is 21 years ~~[of age]~~ old or older; or

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

275 (2) (a) If an individual described in Subsection (1) is participating in a 24/7 sobriety

276 program as defined in Section [41-6a-515.5](#), the court may suspend the jail sentence imposed

277 under Subsection (1)(a).

278 (b) If an individual described in Subsection (1) fails to successfully complete all of the

279 requirements of the 24/7 sobriety program, the court shall impose the suspended jail sentence

280 described in Subsection (2)(a).

281 (3) As part of any sentence for any first conviction of Section [41-6a-502](#) not described

282 in Subsection (1):

283 (a) the court shall:

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

285 (B) require the individual to work in a compensatory-service work program for not less

286 than 48 hours;

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

288 (iii) order the individual to participate in an assessment, if it is found appropriate by a

289 screening under Subsection (3)(a)(ii);

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

291 order substance abuse treatment as described under Subsection (3)(b);

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

293 (vi) (A) order the individual to pay the administrative impound fee described in Section

294 [41-6a-1406](#); or

295 (B) if the administrative impound fee was paid by a party described in Subsection

296 [41-6a-1406](#)(5)(a), other than the individual sentenced, order the individual sentenced to

297 reimburse the party; or

298 (vii) (A) order the individual to pay the towing and storage fees described in Section
299 72-9-603; or

300 (B) if the towing and storage fees were paid by a party described in Subsection
301 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
302 reimburse the party; and

303 (b) the court may:

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

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

307 (iii) order the individual to participate in a 24/7 sobriety program as defined in Section
308 41-6a-515.5 if the individual is 21 years old or older; or

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

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

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

316 [~~(2)~~] (5) If an individual has a prior conviction as defined in Subsection 41-6a-501(2)
317 that is within 10 years of the current conviction under Section 41-6a-502 or the commission of
318 the offense upon which the current conviction is based and where there is admissible evidence
319 that the individual had a blood alcohol level of .16 or higher, had a blood alcohol level of .05 or
320 higher in addition to any measurable controlled substance, or had a combination of two or more
321 controlled substances in the individual's body that were not recommended in accordance with
322 Title 26, Chapter 61a, Utah Medical Cannabis Act or prescribed:

323 (a) the court shall:

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

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

329 (C) impose a jail sentence of not less than 10 days in addition to ordering the
330 individual to obtain substance abuse treatment, if the court finds that substance abuse treatment
331 is more likely to reduce recidivism and is in the interests of public safety;

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

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

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

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

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

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

341 (B) if the administrative impound fee was paid by a party described in Subsection
342 [41-6a-1406\(5\)\(a\)](#), other than the individual sentenced, order the individual sentenced to
343 reimburse the party; or

344 (viii) (A) order the individual to pay the towing and storage fees described in Section
345 [72-9-603](#); or

346 (B) if the towing and storage fees were paid by a party described in Subsection
347 [41-6a-1406\(5\)\(a\)](#), other than the individual sentenced, order the individual sentenced to
348 reimburse the party; and

349 (b) the court may:

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

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

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

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

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

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

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

363 (7) If an individual has a prior conviction as defined in Subsection 41-6a-501(2) that is
364 within 10 years of the current conviction under Section 41-6a-502 or the commission of the
365 offense upon which the current conviction is based and that does not qualify under Subsection
366 (5):

367 (a) the court shall:

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

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

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

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

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

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

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

379 (vii) (A) order the individual to pay the administrative impound fee described in
380 Section 41-6a-1406; or
381 (B) if the administrative impound fee was paid by a party described in Subsection
382 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
383 reimburse the party; or
384 (viii) (A) order the individual to pay the towing and storage fees described in Section
385 72-9-603; or
386 (B) if the towing and storage fees were paid by a party described in Subsection
387 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
388 reimburse the party; and
389 (b) the court may:
390 (i) order the individual to obtain substance abuse treatment if the substance abuse
391 treatment program determines that substance abuse treatment is appropriate;
392 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section
393 41-6a-515.5 if the individual is 21 years old or older; or
394 (iii) order a combination of Subsections (7)(b)(i) and (ii).
395 (8) (a) If an individual described in Subsection (7) is participating in a 24/7 sobriety
396 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed
397 under Subsection (7)(a) after the individual has served a minimum of:
398 (i) five days of the jail sentence for a second offense; or
399 (ii) 10 days of the jail sentence for a third or subsequent offense.
400 (b) If an individual described in Subsection (8)(a) fails to successfully complete all of
401 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail
402 sentence described in Subsection (8)(a).
403 ~~[(3)]~~ (9) Under Subsection 41-6a-503(2), if the court suspends the execution of a
404 prison sentence and places the defendant on probation where there is admissible evidence that
405 the individual had a blood alcohol level of .16 or higher, had a blood alcohol level of .05 in

406 addition to any measurable controlled substance, or had a combination of two or more
407 controlled substances in the person's body that were not recommended in accordance with Title
408 26, Chapter 61a, Utah Medical Cannabis Act or prescribed, the court shall impose:

- 409 (a) a fine of not less than \$1,500;
- 410 (b) a jail sentence of not less than ~~[1,500 hours]~~ 120 days; ~~[and]~~
- 411 (c) home confinement of not fewer than 120 consecutive days through the use of
412 electronic monitoring that includes a substance abuse testing instrument in accordance with
413 Section 41-6a-506; and

414 ~~[(c)]~~ (d) supervised probation.
415 ~~[(4)]~~ (10) (a) For Subsection ~~[(3)]~~ (9) or Subsection 41-6a-503(2)(b), the court:

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

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

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

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

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

- 428 (a) a fine of not less than \$1,500;
- 429 (b) a jail sentence of not less than 60 days;
- 430 (c) home confinement of not fewer than 60 consecutive days through the use of
431 electronic monitoring that includes a substance abuse testing instrument in accordance with
432 Section 41-6a-506; and

433 (d) supervised probation.

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

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

438 (b) A court, with stipulation of both parties and approval from the judge, may convert a
439 jail sentence required in this section to electronic home confinement.

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

444 ~~[(6)]~~ (13) If an individual is convicted of a violation of Section 41-6a-502 and there is
445 admissible evidence that the individual had a blood alcohol level of .16 or higher, the court
446 shall order the following, or describe on record why the order or orders are not appropriate:

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

449 (b) one or more of the following:

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

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

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

456 Section 5. Section 41-6a-512 is amended to read:

457 **41-6a-512. Factual basis for alcohol or drug-related reckless driving plea.**

458 (1) (a) The prosecution shall state for the record a factual basis for a plea, including
459 whether or not there had been consumption of alcohol, drugs, or a combination of both, by the

460 defendant in connection with the violation when the prosecution agrees to a plea of guilty or no
461 contest to a charge of a violation of the following in satisfaction of, or as a substitute for, an
462 original charge of a violation of Section 41-6a-502 for an offense committed before July 1,
463 2008:

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

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

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

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

471 (3) The court shall notify the Driver License Division of each conviction of Section
472 41-6a-528 entered under this section.

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

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

483 Section 6. Section 77-2a-3 is amended to read:

484 **77-2a-3. Manner of entry of plea -- Powers of court.**

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

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

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

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

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

494 (3) Upon finding that a defendant has successfully completed the terms of a plea in
495 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as
496 provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a
497 defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not
498 invoke Section 76-3-402 to further reduce the degree of the offense.

499 (4) The court may require the Department of Corrections to assist in the administration
500 of the plea in abeyance agreement as if the defendant were on probation to the court under
501 Section 77-18-1.

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

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

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

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

513 (d) an order that the defendant comply with any other conditions which could have

514 been imposed as conditions of probation upon conviction and sentencing for the same offense.

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

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

520 (8) [~~Beginning on July 1, 2008, no~~] No plea may be held in abeyance in any case
521 involving a driving under the influence violation under Section [41-6a-502](#), [41-6a-502.5](#),
522 [41-6a-517](#), or [41-6a-520](#).