

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

LONG TITLE

8 **Committee Note:**

9 The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

10 Legislative Vote: 13 voting for 1 voting against 2 absent

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



28 • the person had a combination of two or more controlled substances in the
29 person's body that were not appropriately prescribed or recommended;

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

32 ▶ makes technical changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **41-6a-502.5**, as last amended by Laws of Utah 2015, Chapter 438

40 **41-6a-503**, as last amended by Laws of Utah 2020, Chapter 177

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

42 **41-6a-512**, as last amended by Laws of Utah 2015, Chapter 438

43 **77-2a-3**, as last amended by Laws of Utah 2008, Chapters 3, 339, and 382



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

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

47 **41-6a-502.5. Impaired driving -- Penalty -- Reporting of convictions -- Sentencing**
48 **requirements.**

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

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

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

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

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

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

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

59 of the court ordered probation requirements under Subsection (1)(a), the court shall enter an
60 amended conviction of Section 41-6a-502.

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

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

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

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

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

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

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

84 (7) (a) Except as provided in Subsection (7)(b), a report authorized by Section
85 53-3-104 may not contain any evidence of a conviction for impaired driving in this state if the
86 reporting court notifies the Driver License Division that the defendant is participating in or has
87 successfully completed the program of a driving under the influence court.

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

89 (i) a CDL license holder; or

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

91 (8) The provisions of this section are not available;

92 (a) to a person who has a prior conviction as that term is defined in Subsection

93 41-6a-501(2)[-]; or

94 (b) where there is admissible evidence that the individual:

95 (i) had a blood alcohol level of .16 or higher;

96 (ii) had a blood alcohol level of .05 or higher in addition to any measurable controlled

97 substance; or

98 (iii) had a combination of two or more controlled substances in the person's body that

99 were not:

100 (A) prescribed by a licensed physician; or

101 (B) recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis

102 Act.

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

104 **41-6a-503. Penalties for driving under the influence violations.**

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

106 (a) class B misdemeanor; or

107 (b) class A misdemeanor if the person:

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

109 operated the vehicle in a negligent manner;

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

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

112 vehicle at the time of the offense; or

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

114 or **41-6a-714**.

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

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

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

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

119 **41-6a-501(2)**, each of which is within 10 years of:

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

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

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

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

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

135 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**
136 **drugs, or a combination of both violations.**

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

143 (a) the court shall:

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

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

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

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

- 152 (iv) order the individual to participate in an educational series if the court does not
153 order substance abuse treatment as described under Subsection (1)(b);
- 154 (v) impose a fine of not less than \$700;
- 155 (vi) order probation for the individual in accordance with Section 41-6a-507~~[, if there~~
156 ~~is admissible evidence that the individual had a blood alcohol level of .16 or higher]~~;
- 157 (vii) (A) order the individual to pay the administrative impound fee described in
158 Section 41-6a-1406; or
- 159 (B) if the administrative impound fee was paid by a party described in Subsection
160 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
161 reimburse the party; or
- 162 (viii) (A) order the individual to pay the towing and storage fees described in Section
163 72-9-603; or
- 164 (B) if the towing and storage fees were paid by a party described in Subsection
165 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
166 reimburse the party; and
- 167 (b) the court may:
- 168 (i) order the individual to obtain substance abuse treatment if the substance abuse
169 treatment program determines that substance abuse treatment is appropriate;
- 170 (ii) order probation for the individual in accordance with Section 41-6a-507;
- 171 (iii) order the individual to participate in a ~~[24=7]~~ 24/7 sobriety program as defined in
172 Section 41-6a-515.5 if the individual is 21 years ~~[of age]~~ old or older; or
- 173 (iv) order a combination of Subsections (1)(b)(i) through (iii).
- 174 (2) (a) If an individual described in Subsection (1) is participating in a 24/7 sobriety
175 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed
176 under Subsection (1)(a).
- 177 (b) If an individual described in Subsection (1) fails to successfully complete all of the
178 requirements of the 24/7 sobriety program, the court shall impose the suspended jail sentence
179 described in Subsection (2)(a).
- 180 (3) As part of any sentence for any first conviction of Section 41-6a-502 not described
181 in Subsection (1):
- 182 (a) the court shall:

183 (i) (A) impose a jail sentence of not less than 2 days; or
184 (B) require the individual to work in a compensatory-service work program for not less
185 than 48 hours;
186 (ii) order the individual to participate in a screening;
187 (iii) order the individual to participate in an assessment, if it is found appropriate by a
188 screening under Subsection (3)(a)(ii);
189 (iv) order the individual to participate in an educational series if the court does not
190 order substance abuse treatment as described under Subsection (3)(b);
191 (v) impose a fine of not less than \$700;
192 (vi) (A) order the individual to pay the administrative impound fee described in Section
193 41-6a-1406; or
194 (B) if the administrative impound fee was paid by a party described in Subsection
195 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
196 reimburse the party; or
197 (vii) (A) order the individual to pay the towing and storage fees described in Section
198 72-9-603; or
199 (B) if the towing and storage fees were paid by a party described in Subsection
200 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
201 reimburse the party; and
202 (b) the court may:
203 (i) order the individual to obtain substance abuse treatment if the substance abuse
204 treatment program determines that substance abuse treatment is appropriate;
205 (ii) order probation for the individual in accordance with Section 41-6a-507;
206 (iii) order the individual to participate in a 24/7 sobriety program as defined in Section
207 41-6a-515.5 if the individual is 21 years old or older; or
208 (iv) order a combination of Subsections (3)(b)(i) through (iii).
209 (4) (a) If an individual described in Subsection (3) is participating in a 24/7 sobriety
210 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed
211 under Subsection (3)(a).
212 (b) If an individual described in Subsection (4)(a) fails to successfully complete all of
213 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail

214 sentence described in Subsection (4)(a).

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

222 (a) the court shall:

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

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

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

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

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

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

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

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

237 (B) if the administrative impound fee was paid by a party described in Subsection
238 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
239 reimburse the party; or

240 (viii) (A) order the individual to pay the towing and storage fees described in Section
241 72-9-603; or

242 (B) if the towing and storage fees were paid by a party described in Subsection
243 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
244 reimburse the party; and

245 (b) the court may:

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

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

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

251 (6) (a) If an individual described in Subsection (5) is participating in a 24/7 sobriety
252 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed
253 under Subsection (5)(a).

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

257 (7) If an individual has a prior conviction as defined in Subsection 41-6a-501(2) that is
258 within 10 years of the current conviction under Section 41-6a-502 or the commission of the
259 offense upon which the current conviction is based and that does not qualify under Subsection
260 (5):

261 (a) the court shall:

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

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

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

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

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

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

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

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

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

276 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
277 reimburse the party; or

278 (viii) (A) order the individual to pay the towing and storage fees described in Section
279 72-9-603; or

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

283 (b) the court may:

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

286 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section
287 41-6a-515.5 if the individual is 21 years old or older; or

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

289 (8) (a) If an individual described in Subsection (7) is participating in a 24/7 sobriety
290 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed
291 under Subsection (7)(a).

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

295 ~~[(3)]~~ (9) Under Subsection 41-6a-503(2), if the court suspends the execution of a
296 prison sentence and places the defendant on probation where there is admissible evidence that
297 the individual had a blood alcohol level of .16 or higher, had a blood alcohol level of .05 in
298 addition to any measurable controlled substance, or had a combination of two or more
299 controlled substances in the person's body that were not recommended in accordance with Title
300 26, Chapter 61a, Utah Medical Cannabis Act or prescribed, the court shall impose:

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

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

303 (c) home confinement of not fewer than 120 consecutive days through the use of
304 electronic monitoring that includes a substance abuse testing instrument in accordance with
305 Section 41-6a-506; and

306 ~~[(e)]~~ (d) supervised probation.

307 ~~[(4)]~~ (10) (a) For Subsection ~~[(3)]~~ (9) or Subsection 41-6a-503(2)(b), the court:

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

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

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

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

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

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

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

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

325 (d) supervised probation.

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

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

330 (b) A court or jail may not convert a jail sentence required in this section to electronic
331 home confinement.

332 ~~[(6)]~~ (13) If an individual is convicted of a violation of Section 41-6a-502 and there is
333 admissible evidence that the individual had a blood alcohol level of .16 or higher, the court
334 shall order the following, or describe on record why the order or orders are not appropriate:

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

337 (b) one or more of the following:

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

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

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

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

345 **41-6a-512. Factual basis for alcohol or drug-related reckless driving plea.**

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

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

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

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

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

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

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

366 (b) The court shall render the same order regarding screening, assessment, an
367 educational series, or substance abuse treatment in connection with a first, second, or
368 subsequent conviction under Section 41-6a-528 under Subsection (1), as the court would

369 render in connection with applying respectively, the first, second, or subsequent conviction
370 requirements of Subsections [~~41-6a-505(1), (2), and (4)~~] 41-6a-505(1), (3), (5), and (7).

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

372 **77-2a-3. Manner of entry of plea -- Powers of court.**

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

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

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

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

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

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

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

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

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

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

399 (c) an order that the defendant pay the costs of any remedial or rehabilitative program

400 required by the terms of the agreement; and

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

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

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

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