

# 1st Sub. H.B. 20

## DRIVING UNDER THE INFLUENCE SENTENCING AMENDMENTS

HOUSE FLOOR AMENDMENTS

AMENDMENT 3

FEBRUARY 2, 2021 11:53 AM

Representative **Ryan D. Wilcox** proposes the following amendments:

1. Page , Line 26 through Page 2, Line 27:

- 26 person's body that were not appropriately prescribed or recommended; =  
▶ provides additional sentencing options for certain individuals convicted of driving under the influence;  
▶ for purposes of sentencing, excludes from the definition of "controlled substance" an inactive metabolite of the controlled substance;
- 27 ▶ prohibits a plea in abeyance for certain offenses related to driving under the

2. Page 2, Lines 35 through 36:

- 35 AMENDS:  
= 41-6a-501, as last amended by Laws of Utah 2020, Chapter 177  
36 41-6a-502.5, as last amended by Laws of Utah 2015, Chapter 438

3. Page 2, Lines 42 through 43:

- 42 *Be it enacted by the Legislature of the state of Utah:*  
= Section 1. Section 41-6a-501 is amended to read:  
= **41-6a-501. Definitions.**  
(1) As used in this part:  
(a) "Actual physical control" is determined by a consideration of the totality of the circumstances, but does not include a circumstance in which:  
(i) the person is asleep inside the vehicle;  
(ii) the person is not in the driver's seat of the vehicle;  
(iii) the engine of the vehicle is not running;  
(iv) the vehicle is lawfully parked; and  
(v) under the facts presented, it is evident that the person did not drive the vehicle to the location while under the influence of alcohol, a drug, or the combined influence of alcohol and any drug.  
(b) "Assessment" means an in-depth clinical interview with a licensed mental health therapist:  
(i) used to determine if a person is in need of:  
(A) substance abuse treatment that is obtained at a substance abuse program;  
(B) an educational series; or  
(C) a combination of Subsections (1)(b)(i)(A) and (B); and  
(ii) that is approved by the Division of Substance Abuse and Mental Health in accordance with

Section 62A-15-105.

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

(d) "Drug" or "drugs" means:

(i) a controlled substance as defined in Section 58-37-2;

(ii) a drug as defined in Section 58-17b-102; or

(iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.

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

(f) "Negligence" means simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

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

(i) has applied for a Utah driver license;

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

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

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

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

(A) an assessment; or

(B) an educational series; and

(ii) that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

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

(i) serious permanent disfigurement;

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

(iii) a substantial risk of death.

(j) "Substance abuse treatment" means treatment obtained at a substance abuse program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

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

(l) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in Section 41-6a-102; and

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

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

(B) a motorboat as defined in Section 73-18-2.

(2) As used in Section 41-6a-503:

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

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

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

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

- (II) Section 41-6a-528; or
- (B) for an offense committed on or after July 1, 2008, impaired driving under Section 41-6a-502.5;
- (iii) driving with any measurable controlled substance that is taken illegally in the body under Section 41-6a-517;
- (iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination of both-related reckless driving, or impaired driving under Section 41-6a-502.5 adopted in compliance with Section 41-6a-510;
- (v) automobile homicide under Section 76-5-207;
- (vi) Subsection 58-37-8(2)(g);
- (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of conviction is reduced under Section 76-3-402;
- (viii) refusal of a chemical test under Subsection 41-6a-520(7); or
- (ix) statutes or ordinances previously in effect in this state or in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of both-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815.

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

- (i) enhancement of penalties under:
  - (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and
  - (B) automobile homicide under Section 76-5-207; and
- (ii) expungement under Title 77, Chapter 40, Utah Expungement Act.
- (c) An admission to a violation of Section 41-6a-502 in juvenile court is the equivalent of a conviction even if the charge has been subsequently dismissed in accordance with the Utah Rules of Juvenile Procedure for the purposes of enhancement of penalties under:
  - (i) this part; and
  - (ii) automobile homicide under Section 76-5-207.

**(3) As used in Section 41-6a-505, "controlled substance" does not include an inactive metabolite of a controlled substance.**

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

**\*Renumber Remaining Sections Accordingly\***

4. Page 8, Lines 220 through 225:

- 220 (i) (A) impose a jail sentence of not less than [~~240 hours~~] 20 days; {~~or~~}
- 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; or  
(C) impose a jail sentence of not less than 10 days in addition to ordering the individual to obtain  
substance abuse treatment, if the court finds that substance abuse treatment is more likely to reduce  
recidivism and is in the interests of public safety;  
225 (ii) order the individual to participate in a screening;

5. Page 11, Lines 330 through 333:

330 (10)(b) or (11).  
331 (b) A court ~~{or jail may not}~~ . with stipulation of both parties and approval from the judge,  
may convert a jail sentence required in this section to electronic  
332 home confinement.  
(c) A court may order a jail sentence imposed as a condition of misdemeanor probation under  
this section to be served in multiple two-day increments at weekly intervals if the court determines that  
separate jail increments are necessary to ensure the defendant can serve the statutorily required jail  
term and maintain employment.  
333 [~~6~~] (13) If an individual is convicted of a violation of Section 41-6a-502 and there is