

**DUI PENALTY AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Merrill F. Nelson**

Senate Sponsor: Daniel W. Thatcher

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**LONG TITLE**

**General Description:**

This bill modifies the penalty for driving under the influence.

**Highlighted Provisions:**

This bill:

- ▶ increases the penalty for a second driving under the influence conviction to a class

A misdemeanor under certain circumstances; and

- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**41-6a-503**, as last amended by Laws of Utah 2021, Chapter 79

**41-6a-505**, as last amended by Laws of Utah 2021, Chapters 79 and 83

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

Section 1. Section **41-6a-503** is amended to read:

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

(1) [A] Except as otherwise provided in this section, a person who violates [for the first



28 ~~or second time]~~ Section 41-6a-502 is guilty of a~~[(a)]~~ class B misdemeanor~~]; ~~or]~~.~~

29 ~~[(b) class A misdemeanor if the person:]~~

30 (2) A person who violates Section 41-6a-502 is guilty of a class A misdemeanor if the  
31 person:

32 ~~[(i)]~~ (a) has also inflicted bodily injury upon another as a proximate result of having  
33 operated the vehicle in a negligent manner;

34 ~~[(ii)]~~ (b) had a passenger ~~[under 16 years of age]~~ younger than 16 years old in the  
35 vehicle at the time of the offense;

36 ~~[(iii)]~~ (c) was 21 years ~~[of age]~~ old or older and had a passenger ~~[under 18 years of age]~~  
37 younger than 18 years old in the vehicle at the time of the offense; ~~]; ~~or]~~~~

38 ~~[(iv)]~~ (d) at the time of the violation of Section 41-6a-502, also violated Section  
39 41-6a-712 or 41-6a-714~~]; ~~or]~~~~

40 (e) has one prior conviction as defined in Subsection 41-6a-501(2) within 10 years of:

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

42 (ii) the commission of the offense upon which the current conviction is based.

43 ~~[(2)]~~ (3) A person who violates Section 41-6a-502 is guilty of a third degree felony if:

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

46 (b) the person has two or more prior convictions as defined in Subsection  
47 41-6a-501(2), each of which is within 10 years of:

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

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

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

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

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

54 (iii) any conviction described in Subsection ~~[(2)]~~ (3)(c)(i) or (ii) which judgment of  
55 conviction is reduced under Section 76-3-402.

56 ~~[(3)]~~ (4) A person is guilty of a separate offense for each victim suffering bodily injury  
57 or serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a  
58 result of the person's violation of Section 76-5-207 whether or not the injuries arise from the

59 same episode of driving.

60 [~~(4)~~] (5) A person is guilty of a separate offense under Subsection [~~(1)(b)(ii)~~] (2)(b) for  
61 each passenger in the vehicle at the time of the offense that is [~~under~~] younger than 16 years  
62 old.

63 Section 2. Section **41-6a-505** is amended to read:

64 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**  
65 **drugs, or a combination of both violations.**

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

72 (a) the court shall:

73 (i) (A) impose a jail sentence of not less than five days; or

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

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

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

80 (iv) order the individual to participate in an educational series if the court does not  
81 order substance abuse treatment as described under Subsection (1)(b);

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

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

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

86 (B) if the administrative impound fee was paid by a party described in Subsection  
87 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
88 reimburse the party;

89 (viii) (A) order the individual to pay the towing and storage fees described in Section

90 72-9-603; or

91 (B) if the towing and storage fees were paid by a party described in Subsection  
92 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
93 reimburse the party; or

94 (ix) unless the court determines and states on the record that an ignition interlock  
95 system is not necessary for the safety of the community and in the best interest of justice, order  
96 the installation of an ignition interlock system as described in Section 41-6a-518; and

97 (b) the court may:

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

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

101 (iii) order the individual to participate in a 24/7 sobriety program as defined in Section  
102 41-6a-515.5 if the individual is 21 years old or older; or

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

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

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

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

112 (a) the court shall:

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

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

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

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

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

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

122 (vi) (A) order the individual to pay the administrative impound fee described in Section  
123 41-6a-1406; or

124 (B) if the administrative impound fee was paid by a party described in Subsection  
125 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
126 reimburse the party; or

127 (vii) (A) order the individual to pay the towing and storage fees described in Section  
128 72-9-603; or

129 (B) if the towing and storage fees were paid by a party described in Subsection  
130 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
131 reimburse the party; and

132 (b) the court may:

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

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

136 (iii) order the individual to participate in a 24/7 sobriety program as defined in Section  
137 41-6a-515.5 if the individual is 21 years old or older; or

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

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

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

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

- 152 (a) the court shall:
- 153 (i) (A) impose a jail sentence of not less than 20 days;
- 154 (B) impose a jail sentence of not less than 10 days in addition to home confinement of
- 155 not fewer than 60 consecutive days through the use of electronic monitoring that includes a
- 156 substance abuse testing instrument in accordance with Section 41-6a-506; or
- 157 (C) impose a jail sentence of not less than 10 days in addition to ordering the
- 158 individual to obtain substance abuse treatment, if the court finds that substance abuse treatment
- 159 is more likely to reduce recidivism and is in the interests of public safety;
- 160 (ii) order the individual to participate in a screening;
- 161 (iii) order the individual to participate in an assessment, if it is found appropriate by a
- 162 screening under Subsection (5)(a)(ii);
- 163 (iv) order the individual to participate in an educational series if the court does not
- 164 order substance abuse treatment as described under Subsection (5)(b);
- 165 (v) impose a fine of not less than \$800;
- 166 (vi) order probation for the individual in accordance with Section 41-6a-507;
- 167 (vii) order the installation of an ignition interlock system as described in Section
- 168 41-6a-518;
- 169 (viii) (A) order the individual to pay the administrative impound fee described in
- 170 Section 41-6a-1406; or
- 171 (B) if the administrative impound fee was paid by a party described in Subsection
- 172 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
- 173 reimburse the party; or
- 174 (ix) (A) order the individual to pay the towing and storage fees described in Section
- 175 72-9-603; or
- 176 (B) if the towing and storage fees were paid by a party described in Subsection
- 177 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
- 178 reimburse the party; and
- 179 (b) the court may:
- 180 (i) order the individual to obtain substance abuse treatment if the substance abuse
- 181 treatment program determines that substance abuse treatment is appropriate;
- 182 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section

183 41-6a-515.5 if the individual is 21 years old or older; or  
184 (iii) order a combination of Subsections (5)(b)(i) and (ii).  
185 (6) (a) If an individual described in Subsection (5) is participating in a 24/7 sobriety  
186 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed  
187 under Subsection (5)(a) after the individual has served a minimum of:  
188 (i) five days of the jail sentence for a second offense; or  
189 (ii) 10 days of the jail sentence for a third or subsequent offense.  
190 (b) If an individual described in Subsection (6)(a) fails to successfully complete all of  
191 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail  
192 sentence described in Subsection (6)(a).  
193 (7) If an individual has a prior conviction as defined in Subsection 41-6a-501(2) that is  
194 within 10 years of the current conviction under Section 41-6a-502 or the commission of the  
195 offense upon which the current conviction is based and that does not qualify under Subsection  
196 (5):  
197 (a) the court shall:  
198 (i) (A) impose a jail sentence of not less than 10 days; or  
199 (B) impose a jail sentence of not less than 5 days in addition to home confinement of  
200 not fewer than 30 consecutive days through the use of electronic monitoring that includes a  
201 substance abuse testing instrument in accordance with Section 41-6a-506;  
202 (ii) order the individual to participate in a screening;  
203 (iii) order the individual to participate in an assessment, if it is found appropriate by a  
204 screening under Subsection (7)(a)(ii);  
205 (iv) order the individual to participate in an educational series if the court does not  
206 order substance abuse treatment as described under Subsection (7)(b);  
207 (v) impose a fine of not less than \$800;  
208 (vi) order probation for the individual in accordance with Section 41-6a-507;  
209 (vii) (A) order the individual to pay the administrative impound fee described in  
210 Section 41-6a-1406; or  
211 (B) if the administrative impound fee was paid by a party described in Subsection  
212 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
213 reimburse the party; or

214 (viii) (A) order the individual to pay the towing and storage fees described in Section  
215 72-9-603; or

216 (B) if the towing and storage fees were paid by a party described in Subsection  
217 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
218 reimburse the party; and

219 (b) the court may:

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

222 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section  
223 41-6a-515.5 if the individual is 21 years old or older; or

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

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

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

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

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

233 (9) Under Subsection 41-6a-503[~~(2)~~](3), if the court suspends the execution of a prison  
234 sentence and places the defendant on probation where there is admissible evidence that the  
235 individual had a blood alcohol level of .16 or higher, had a blood alcohol level of .05 in  
236 addition to any measurable controlled substance, or had a combination of two or more  
237 controlled substances in the person's body that were not recommended in accordance with Title  
238 26, Chapter 61a, Utah Medical Cannabis Act or prescribed, the court shall impose:

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

240 (b) a jail sentence of not less than 120 days;

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

244 (d) supervised probation.



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

246 (i) shall impose an order requiring the individual to obtain a screening and assessment  
247 for alcohol and substance abuse, and treatment as appropriate; and

248 (ii) may impose an order requiring the individual to participate in a 24/7 sobriety  
249 program as defined in Section 41-6a-515.5 if the individual is 21 years old or older.

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

253 (11) Under Subsection 41-6a-503[(2)](3), if the court suspends the execution of a  
254 prison sentence and places the defendant on probation with a sentence not described in  
255 Subsection (9), the court shall impose:

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

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

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

261 (d) supervised probation.

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

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

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

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

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

275 (a) treatment as described under Subsection (1)(b), (3)(b), (5)(b), or (7)(b); and

276 (b) one or more of the following:

277 (i) the installation of an ignition interlock system as a condition of probation for the  
278 individual in accordance with Section [41-6a-518](#);

279 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring  
280 device or remote alcohol monitor as a condition of probation for the individual; or

281 (iii) the imposition of home confinement through the use of electronic monitoring in  
282 accordance with Section [41-6a-506](#).