

Representative Steve Eliason proposes the following substitute bill:

DUI AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill amends provisions related to driving under the influence and refusal of a chemical test.

Highlighted Provisions:

This bill:

- ▶ combines separate sections that include the elements of a driving under the influence offense into a single section;
- ▶ combines separate sections that include the elements of a refusal of a chemical test offense into a single section; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

24-4-102, as last amended by Laws of Utah 2022, Chapters 116, 274

31A-22-303, as last amended by Laws of Utah 2020, Chapter 76



- 26 [41-6a-501](#), as last amended by Laws of Utah 2022, Chapter 116
- 27 [41-6a-502](#), as last amended by Laws of Utah 2022, Chapter 415
- 28 [41-6a-505](#), as last amended by Laws of Utah 2022, Chapters 116, 134 and 137
- 29 [41-6a-518](#), as last amended by Laws of Utah 2022, Chapter 272
- 30 [41-6a-518.2](#), as last amended by Laws of Utah 2022, Chapter 116
- 31 [41-6a-520](#), as last amended by Laws of Utah 2022, Chapters 116, 134
- 32 [41-6a-521.1](#), as enacted by Laws of Utah 2020, Chapter 177
- 33 [41-6a-527](#), as last amended by Laws of Utah 2017, Chapter 181
- 34 [41-6a-529](#), as last amended by Laws of Utah 2022, Chapter 116
- 35 [53-3-218](#), as last amended by Laws of Utah 2022, Chapter 426
- 36 [53-3-220](#), as last amended by Laws of Utah 2022, Chapter 116
- 37 [53-3-227](#), as last amended by Laws of Utah 2008, Chapter 250
- 38 [58-37f-201](#), as last amended by Laws of Utah 2022, Chapter 116
- 39 [58-37f-703](#), as last amended by Laws of Utah 2016, Chapter 99
- 40 [76-5-102.1](#), as enacted by Laws of Utah 2022, Chapter 116
- 41 [76-5-207](#), as last amended by Laws of Utah 2022, Chapters 116, 181 and last amended
- 42 by Coordination Clause, Laws of Utah 2022, Chapter 116
- 43 [77-2a-3](#), as last amended by Laws of Utah 2022, Chapter 116

44 ENACTS:

45 [41-6a-520.1](#), Utah Code Annotated 1953

46 REPEALS:

47 [41-6a-503](#), as last amended by Laws of Utah 2022, Chapters 116, 134 and 137



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

50 Section 1. Section **24-4-102** is amended to read:

51 **24-4-102. Property subject to forfeiture.**

52 (1) Except as provided in Subsection (2), (3), or (4), an agency may seek to forfeit:

53 (a) seized property that was used to facilitate the commission of an offense that is a
54 violation of federal or state law; and

55 (b) seized proceeds.

56 (2) If seized property is used to facilitate an offense that is a violation of Section

57 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, an agency may not forfeit the property if
58 the forfeiture would constitute a prior restraint on the exercise of an affected party's rights
59 under the First Amendment to the Constitution of the United States or Utah Constitution,
60 Article I, Section 15, or would otherwise unlawfully interfere with the exercise of the party's
61 rights under the First Amendment to the Constitution of the United States or Utah Constitution,
62 Article I, Section 15.

63 (3) If a motor vehicle is used in an offense that is a violation of Section 41-6a-502,
64 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1),
65 Subsection 76-5-102.1(2)(b), or Section 76-5-207, an agency may not seek forfeiture of the
66 motor vehicle, unless:

67 (a) the operator of the vehicle has previously been convicted of an offense committed
68 after May 12, 2009, that is:

69 (i) a felony driving under the influence violation under Section 41-6a-502 or
70 Subsection 76-5-102.1(2)(a);

71 (ii) a felony violation under Subsection 76-5-102.1(2)(b);

72 (iii) a violation under Section 76-5-207; or

73 (iv) operating a motor vehicle with any amount of a controlled substance in an
74 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,
75 Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g); or

76 (b) the operator of the vehicle was driving on a denied, suspended, revoked, or
77 disqualified license and:

78 (i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii)
79 was imposed because of a violation under:

80 (A) Section 41-6a-502;

81 (B) Section 41-6a-517;

82 (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);

83 (D) Section [~~41-6a-520~~] 41-6a-520.1;

84 (E) operating a motor vehicle with any amount of a controlled substance in an
85 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,
86 Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

87 (F) Section 76-5-102.1;

88 (G) Section 76-5-207; or

89 (H) a criminal prohibition as a result of a plea bargain after having been originally
90 charged with violating one or more of the sections or ordinances described in Subsections
91 (3)(b)(i)(A) through (G); or

92 (ii) the denial, suspension, revocation, or disqualification described in Subsections
93 (3)(b)(i)(A) through (H):

94 (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,
95 revocation, or disqualification; and

96 (B) the original denial, suspension, revocation, or disqualification was imposed
97 because of a violation described in Subsections (3)(b)(i)(A) through (H).

98 (4) If a peace officer seizes property incident to an arrest solely for possession of a
99 controlled substance under Subsection 58-37-8(2)(a)(i) but not Subsection 58-37-8(2)(b)(i), an
100 agency may not seek to forfeit the property that was seized in accordance with the arrest.

101 Section 2. Section 31A-22-303 is amended to read:

102 **31A-22-303. Motor vehicle liability coverage.**

103 (1) (a) In addition to complying with the requirements of Chapter 21, Insurance
104 Contracts in General, and [~~Chapter 22, Part 2, Liability Insurance in General~~] Part 2, Liability
105 Insurance in General, a policy of motor vehicle liability coverage under Subsection
106 31A-22-302(1)(a) shall:

107 (i) name the motor vehicle owner or operator in whose name the policy was purchased,
108 state that named insured's address, the coverage afforded, the premium charged, the policy
109 period, and the limits of liability;

110 (ii) (A) if it is an owner's policy, designate by appropriate reference all the motor
111 vehicles on which coverage is granted, insure the person named in the policy, insure any other
112 person using any named motor vehicle with the express or implied permission of the named
113 insured, and, except as provided in Section 31A-22-302.5, insure any person included in
114 Subsection (1)(a)(iii) against loss from the liability imposed by law for damages arising out of
115 the ownership, maintenance, or use of these motor vehicles within the United States and
116 Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not
117 less than the minimum limits specified under Section 31A-22-304; or

118 (B) if it is an operator's policy, insure the person named as insured against loss from

119 the liability imposed upon him by law for damages arising out of the insured's use of any motor
120 vehicle not owned by him, within the same territorial limits and with the same limits of liability
121 as in an owner's policy under Subsection (1)(a)(ii)(A);

122 (iii) except as provided in Section 31A-22-302.5, insure persons related to the named
123 insured by blood, marriage, adoption, or guardianship who are residents of the named insured's
124 household, including those who usually make their home in the same household but
125 temporarily live elsewhere, to the same extent as the named insured;

126 (iv) where a claim is brought by the named insured or a person described in Subsection
127 (1)(a)(iii), the available coverage of the policy may not be reduced or stepped-down because:

128 (A) a permissive user driving a covered motor vehicle is at fault in causing an accident;

129 or

130 (B) the named insured or any of the persons described in [this] Subsection (1)(a)(iii)
131 driving a covered motor vehicle is at fault in causing an accident; and

132 (v) cover damages or injury resulting from a covered driver of a motor vehicle who is
133 stricken by an unforeseeable paralysis, seizure, or other unconscious condition and who is not
134 reasonably aware that paralysis, seizure, or other unconscious condition is about to occur to the
135 extent that a person of ordinary prudence would not attempt to continue driving.

136 (b) The driver's liability under Subsection (1)(a)(v) is limited to the insurance
137 coverage.

138 (c) (i) "Guardianship" under Subsection (1)(a)(iii) includes the relationship between a
139 foster parent and a minor who is in the legal custody of the Division of Child and Family
140 Services if:

141 (A) the minor resides in a foster home, as defined in Section 62A-2-101, with a foster
142 parent who is the named insured; and

143 (B) the foster parent has signed to be jointly and severally liable for compensatory
144 damages caused by the minor's operation of a motor vehicle in accordance with Section
145 53-3-211.

146 (ii) "Guardianship" as defined under this Subsection (1)(c) ceases to exist when a
147 minor described in Subsection (1)(c)(i)(A) is no longer a resident of the named insured's
148 household.

149 (2) (a) A policy containing motor vehicle liability coverage under Subsection

150 31A-22-302(1)(a) may:

151 (i) provide for the prorating of the insurance under that policy with other valid and
152 collectible insurance;

153 (ii) grant any lawful coverage in addition to the required motor vehicle liability
154 coverage;

155 (iii) if the policy is issued to a person other than a motor vehicle business, limit the
156 coverage afforded to a motor vehicle business or its officers, agents, or employees to the
157 minimum limits under Section 31A-22-304, and to those instances when there is no other valid
158 and collectible insurance with at least those limits, whether the other insurance is primary,
159 excess, or contingent; and

160 (iv) if issued to a motor vehicle business, restrict coverage afforded to anyone other
161 than the motor vehicle business or its officers, agents, or employees to the minimum limits
162 under Section 31A-22-304, and to those instances when there is no other valid and collectible
163 insurance with at least those limits, whether the other insurance is primary, excess, or
164 contingent.

165 (b) (i) The liability insurance coverage of a permissive user of a motor vehicle owned
166 by a motor vehicle business shall be primary coverage.

167 (ii) The liability insurance coverage of a motor vehicle business shall be secondary to
168 the liability insurance coverage of a permissive user as specified under Subsection (2)(b)(i).

169 (3) Motor vehicle liability coverage need not insure any liability:

170 (a) under any workers' compensation law under Title 34A, Utah Labor Code;

171 (b) resulting from bodily injury to or death of an employee of the named insured, other
172 than a domestic employee, while engaged in the employment of the insured, or while engaged
173 in the operation, maintenance, or repair of a designated vehicle; or

174 (c) resulting from damage to property owned by, rented to, bailed to, or transported by
175 the insured.

176 (4) An insurance carrier providing motor vehicle liability coverage has the right to
177 settle any claim covered by the policy, and if the settlement is made in good faith, the amount
178 of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

179 (5) A policy containing motor vehicle liability coverage imposes on the insurer the
180 duty to defend, in good faith, any person insured under the policy against any claim or suit

181 seeking damages which would be payable under the policy.

182 (6) (a) If a policy containing motor vehicle liability coverage provides an insurer with
183 the defense of lack of cooperation on the part of the insured, that defense is not effective
184 against a third person making a claim against the insurer, unless there was collusion between
185 the third person and the insured.

186 (b) If the defense of lack of cooperation is not effective against the claimant, after
187 payment, the insurer is subrogated to the injured person's claim against the insured to the extent
188 of the payment and is entitled to reimbursement by the insured after the injured third person has
189 been made whole with respect to the claim against the insured.

190 (7) (a) A policy of motor vehicle coverage may limit coverage to the policy minimum
191 limits under Section [31A-22-304](#) if the policy or a specifically reduced premium was extended
192 to the insured upon express written declaration executed by the insured that the insured motor
193 vehicle would not be operated by a person described in Subsection (7)(c) operating in a manner
194 described in Subsection (7)(b)(i).

195 (b) (i) A policy of motor vehicle liability coverage may limit coverage as described in
196 Subsection (7)(a) if the insured motor vehicle is operated by an individual described in
197 Subsection (7)(c) if the individual described in Subsection (7)(c) is guilty of:

198 (A) driving under the influence as described in Section [41-6a-502](#);

199 (B) impaired driving as described in Section [41-6a-502.5](#); or

200 (C) operating a vehicle with a measurable controlled substance in the individual's body
201 as described in Section [41-6a-517](#).

202 (ii) An individual's refusal to submit to a chemical test as described in [~~Section~~]
203 Sections [41-6a-520](#) and [41-6a-520.1](#) is admissible evidence, but not conclusive, that the
204 individual is guilty of an offense described in Subsection (7)(b)(i).

205 (c) A reduction in coverage as described in Subsection (7)(a) applies to the following
206 individuals:

207 (i) the insured;

208 (ii) the spouse of the insured; or

209 (iii) if the individual has a separate policy as a secondary source of coverage, and:

210 (A) the individual is over the age of 21 and resides in the household of the insured; or

211 (B) the individual is a permissible user of the motor vehicle.

212 (d) A reduction in coverage as described in Subsection (7)(a) does not apply to an
213 individual under the age of 21 who is a relative of the insured and a resident of the insured's
214 household.

215 (8) (a) When a claim is brought exclusively by a named insured or a person described
216 in Subsection (1)(a)(iii) and asserted exclusively against a named insured or an individual
217 described in Subsection (1)(a)(iii), the claimant may elect to resolve the claim:

- 218 (i) by submitting the claim to binding arbitration; or
- 219 (ii) through litigation.

220 (b) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii),
221 the claimant may not elect to resolve the claim through binding arbitration under this section
222 without the written consent of both parties and the defendant's liability insurer.

223 (c) (i) Unless otherwise agreed on in writing by the parties, a claim that is submitted to
224 binding arbitration under Subsection (8)(a)(i) shall be resolved by a panel of three arbitrators.

225 (ii) Unless otherwise agreed on in writing by the parties, each party shall select an
226 arbitrator. The arbitrators selected by the parties shall select a third arbitrator.

227 (d) Unless otherwise agreed on in writing by the parties, each party will pay the fees
228 and costs of the arbitrator that party selects. Both parties shall share equally the fees and costs
229 of the third arbitrator.

230 (e) Except as otherwise provided in this section, an arbitration procedure conducted
231 under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act,
232 unless otherwise agreed on in writing by the parties.

233 (f) (i) Discovery shall be conducted in accordance with Rules 26b through 36, Utah
234 Rules of Civil Procedure.

235 (ii) All issues of discovery shall be resolved by the arbitration panel.

236 (g) A written decision of two of the three arbitrators shall constitute a final decision of
237 the arbitration panel.

238 (h) Prior to the rendering of the arbitration award:

239 (i) the existence of a liability insurance policy may be disclosed to the arbitration
240 panel; and

241 (ii) the amount of all applicable liability insurance policy limits may not be disclosed to
242 the arbitration panel.

243 (i) The amount of the arbitration award may not exceed the liability limits of all the
244 defendant's applicable liability insurance policies, including applicable liability umbrella
245 policies. If the initial arbitration award exceeds the liability limits of all applicable liability
246 insurance policies, the arbitration award shall be reduced to an amount equal to the liability
247 limits of all applicable liability insurance policies.

248 (j) The arbitration award is the final resolution of all claims between the parties unless
249 the award was procured by corruption, fraud, or other undue means.

250 (k) If the arbitration panel finds that the action was not brought, pursued, or defended
251 in good faith, the arbitration panel may award reasonable fees and costs against the party that
252 failed to bring, pursue, or defend the claim in good faith.

253 (l) Nothing in this section is intended to limit any claim under any other portion of an
254 applicable insurance policy.

255 (9) An at-fault driver or an insurer issuing a policy of insurance under this part that is
256 covering an at-fault driver may not reduce compensation to an injured party based on the
257 injured party not being covered by a policy of insurance that provides personal injury
258 protection coverage under Sections [31A-22-306](#) through [31A-22-309](#).

259 Section 3. Section **41-6a-501** is amended to read:

260 **41-6a-501. Definitions.**

261 (1) As used in this part:

262 (a) "Actual physical control" is determined by a consideration of the totality of the
263 circumstances, but does not include a circumstance in which:

264 (i) the person is asleep inside the vehicle;

265 (ii) the person is not in the driver's seat of the vehicle;

266 (iii) the engine of the vehicle is not running;

267 (iv) the vehicle is lawfully parked; and

268 (v) under the facts presented, it is evident that the person did not drive the vehicle to
269 the location while under the influence of alcohol, a drug, or the combined influence of alcohol
270 and any drug.

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

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

- 274 (A) substance abuse treatment that is obtained at a substance abuse program;
- 275 (B) an educational series; or
- 276 (C) a combination of Subsections (1)(b)(i)(A) and (B); and
- 277 (ii) that is approved by the Division of Substance Abuse and Mental Health in
- 278 accordance with Section [62A-15-105](#).
- 279 (c) "Driving under the influence court" means a court that is approved as a driving
- 280 under the influence court by the Utah Judicial Council according to standards established by
- 281 the Judicial Council.
- 282 (d) "Drug" or "drugs" means:
- 283 (i) a controlled substance as defined in Section [58-37-2](#);
- 284 (ii) a drug as defined in Section [58-17b-102](#); or
- 285 (iii) a substance that, when knowingly, intentionally, or recklessly taken into the human
- 286 body, can impair the ability of a person to safely operate a motor vehicle.
- 287 (e) "Educational series" means an educational series obtained at a substance abuse
- 288 program that is approved by the Division of Substance Abuse and Mental Health in accordance
- 289 with Section [62A-15-105](#).
- 290 (f) "Negligence" means simple negligence, the failure to exercise that degree of care
- 291 that an ordinarily reasonable and prudent person exercises under like or similar circumstances.
- 292 (g) "Novice learner driver" means an individual who:
- 293 (i) has applied for a Utah driver license;
- 294 (ii) has not previously held a driver license in this state or another state; and
- 295 (iii) has not completed the requirements for issuance of a Utah driver license.
- 296 (h) "Screening" means a preliminary appraisal of a person:
- 297 (i) used to determine if the person is in need of:
- 298 (A) an assessment; or
- 299 (B) an educational series; and
- 300 (ii) that is approved by the Division of Substance Abuse and Mental Health in
- 301 accordance with Section [62A-15-105](#).
- 302 (i) "Serious bodily injury" means bodily injury that creates or causes:
- 303 (i) serious permanent disfigurement;
- 304 (ii) protracted loss or impairment of the function of any bodily member or organ; or

- 305 (iii) a substantial risk of death.
- 306 (j) "Substance abuse treatment" means treatment obtained at a substance abuse
307 program that is approved by the Division of Substance Abuse and Mental Health in accordance
308 with Section [62A-15-105](#).
- 309 (k) "Substance abuse treatment program" means a state licensed substance abuse
310 program.
- 311 (l) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in
312 Section [41-6a-102](#); and
- 313 (ii) "Vehicle" or "motor vehicle" includes:
- 314 (A) an off-highway vehicle as defined under Section [41-22-2](#); and
- 315 (B) a motorboat as defined in Section [73-18-2](#).
- 316 (2) As used in [~~Section [41-6a-503](#)~~] Sections [41-6a-502](#) and [41-6a-520.1](#):
- 317 (a) "Conviction" means any conviction arising from a separate episode of driving for a
318 violation of:
- 319 (i) driving under the influence under Section [41-6a-502](#);
- 320 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a
321 combination of both-related reckless driving under[~~†~~] Sections [41-6a-512](#) and [41-6a-528](#); or
322 [~~(I) Section [41-6a-512](#); and~~]
- 323 [~~(II) Section [41-6a-528](#); or~~]
- 324 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
325 [41-6a-502.5](#);
- 326 (iii) driving with any measurable controlled substance that is taken illegally in the body
327 under Section [41-6a-517](#);
- 328 (iv) local ordinances similar to Section [41-6a-502](#), alcohol, any drug, or a combination
329 of both-related reckless driving, or impaired driving under Section [41-6a-502.5](#) adopted in
330 compliance with Section [41-6a-510](#);
- 331 (v) Section [76-5-207](#);
- 332 (vi) operating a motor vehicle with any amount of a controlled substance in an
333 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,
334 Laws of Utah 2021, Chapter 236, Section 1, Subsection [58-37-8\(2\)\(g\)](#);
- 335 (vii) negligently operating a vehicle resulting in injury under Section [76-5-102.1](#);

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

338 (ix) refusal of a chemical test under Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1); or

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

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

348 (i) enhancement of penalties under this [~~Chapter 6a, Part 5, Driving Under the~~
349 ~~Influence and Reckless Driving~~] part; and

350 (ii) expungement under [~~Title 77, Chapter 40, Expungement~~] Title 77, Chapter 40a,
351 Expungement.

352 (c) An admission to a violation of Section 41-6a-502 in juvenile court is the equivalent
353 of a conviction even if the charge has been subsequently dismissed in accordance with the Utah
354 Rules of Juvenile Procedure for the purposes of enhancement of penalties under:

355 (i) this part;

356 (ii) negligently operating a vehicle resulting in injury under Section 76-5-102.1; and

357 (iii) negligently operating a vehicle resulting in death under Section 76-5-207.

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

360 Section 4. Section 41-6a-502 is amended to read:

361 **41-6a-502. Driving under the influence of alcohol, drugs, or a combination of**
362 **both or with specified or unsafe blood alcohol concentration -- Reporting of convictions.**

363 (1) [~~A person may not operate or be~~] An actor commits driving under the influence if
364 the actor operates or is in actual physical control of a vehicle within this state if the [~~person~~]
365 actor:

366 (a) has sufficient alcohol in the [~~person's~~] actor's body that a subsequent chemical test

367 shows that the [person] actor has a blood or breath alcohol concentration of .05 grams or
368 greater at the time of the test;

369 (b) is under the influence of alcohol, any drug, or the combined influence of alcohol
370 and any drug to a degree that renders the [person] actor incapable of safely operating a vehicle;
371 or

372 (c) has a blood or breath alcohol concentration of .05 grams or greater at the time of
373 operation or actual physical control.

374 (2) (a) A violation of Subsection (1) is a class B misdemeanor.

375 (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A
376 misdemeanor if the actor:

377 (i) has a passenger younger than 16 years old in the vehicle at the time of the offense;

378 (ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle
379 at the time of the offense;

380 (iii) the actor also violated Section [41-6a-712](#) or [41-6a-714](#) at the time of the offense;

381 or

382 (iv) has one prior conviction within 10 years of:

383 (A) the current conviction under Subsection (1); or

384 (B) the commission of the offense upon which the current conviction is based.

385 (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree
386 felony if:

387 (i) the actor has two or more prior convictions each of which is within 10 years of:

388 (A) the current conviction; or

389 (B) the commission of the offense upon which the current conviction is based; or

390 (ii) the current conviction is at any time after a conviction of:

391 (A) a violation of Section [76-5-207](#);

392 (B) a felony violation of this section, Section [76-5-102.1](#), [41-6a-520.1](#), or a statute
393 previously in effect in this state that would constitute a violation of this section; or

394 (C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of
395 conviction is reduced under Section [76-3-402](#).

396 ~~[(2)]~~ (3) Alcohol concentration in the blood shall be based upon grams of alcohol per
397 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of

398 alcohol per 210 liters of breath.

399 ~~[(3)]~~ (4) A violation of this section includes a violation under a local ordinance similar
400 to this section adopted in compliance with Section 41-6a-510.

401 ~~[(4)]~~ (5) ~~[Beginning on July 1, 2012, a]~~ A court shall, monthly, send to the Division of
402 Professional Licensing, created in Section 58-1-103, a report containing the name, case
403 number, and, if known, the date of birth of each person convicted during the preceding month
404 of a violation of this section for whom there is evidence that the person was driving under the
405 influence, in whole or in part, of a prescribed controlled substance.

406 ~~[(5)]~~ (6) An offense described in this section is a strict liability offense.

407 ~~[(6)]~~ (7) A guilty or no contest plea to an offense described in this section may not be
408 held in abeyance.

409 (8) An actor is guilty of a separate offense under Subsection (1) for each passenger in
410 the vehicle that is younger than 16 years old at the time of the offense.

411 Section 5. Section 41-6a-505 is amended to read:

412 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**
413 **drugs, or a combination of both violations.**

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

420 (a) the court shall:

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

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

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

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

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

429 order substance abuse treatment as described under Subsection (1)(b);
430 (v) impose a fine of not less than \$700;
431 (vi) order probation for the individual in accordance with Section 41-6a-507;
432 (vii) (A) order the individual to pay the administrative impound fee described in
433 Section 41-6a-1406; or
434 (B) if the administrative impound fee was paid by a party described in Subsection
435 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
436 reimburse the party;
437 (viii) (A) order the individual to pay the towing and storage fees described in Section
438 72-9-603; or
439 (B) if the towing and storage fees were paid by a party described in Subsection
440 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
441 reimburse the party; or
442 (ix) unless the court determines and states on the record that an ignition interlock
443 system is not necessary for the safety of the community and in the best interest of justice, order
444 the installation of an ignition interlock system as described in Section 41-6a-518; and
445 (b) the court may:
446 (i) order the individual to obtain substance abuse treatment if the substance abuse
447 treatment program determines that substance abuse treatment is appropriate;
448 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section
449 41-6a-515.5 if the individual is 21 years old or older; or
450 (iii) order a combination of Subsections (1)(b)(i) and (ii).
451 (2) (a) If an individual described in Subsection (1) is participating in a 24/7 sobriety
452 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed
453 under Subsection (1)(a).
454 (b) If an individual described in Subsection (1) fails to successfully complete all of the
455 requirements of the 24/7 sobriety program, the court shall impose the suspended jail sentence
456 described in Subsection (2)(a).
457 (3) As part of any sentence for any first conviction of Section 41-6a-502 not described
458 in Subsection (1):
459 (a) the court shall:

- 460 (i) (A) impose a jail sentence of not less than two days; or
- 461 (B) require the individual to work in a compensatory-service work program for not less
- 462 than 48 hours;
- 463 (ii) order the individual to participate in a screening;
- 464 (iii) order the individual to participate in an assessment, if it is found appropriate by a
- 465 screening under Subsection (3)(a)(ii);
- 466 (iv) order the individual to participate in an educational series if the court does not
- 467 order substance abuse treatment as described under Subsection (3)(b);
- 468 (v) impose a fine of not less than \$700;
- 469 (vi) (A) order the individual to pay the administrative impound fee described in Section
- 470 41-6a-1406; or
- 471 (B) if the administrative impound fee was paid by a party described in Subsection
- 472 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
- 473 reimburse the party; or
- 474 (vii) (A) order the individual to pay the towing and storage fees described in Section
- 475 72-9-603; or
- 476 (B) if the towing and storage fees were paid by a party described in Subsection
- 477 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
- 478 reimburse the party; and
- 479 (b) the court may:
 - 480 (i) order the individual to obtain substance abuse treatment if the substance abuse
 - 481 treatment program determines that substance abuse treatment is appropriate;
 - 482 (ii) order probation for the individual in accordance with Section 41-6a-507;
 - 483 (iii) order the individual to participate in a 24/7 sobriety program as defined in Section
 - 484 41-6a-515.5 if the individual is 21 years old or older; or
 - 485 (iv) order a combination of Subsections (3)(b)(i) through (iii).
- 486 (4) (a) If an individual described in Subsection (3) is participating in a 24/7 sobriety
- 487 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed
- 488 under Subsection (3)(a).
- 489 (b) If an individual described in Subsection (4)(a) fails to successfully complete all of
- 490 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail

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

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

500 (a) the court shall:

501 (i) (A) impose a jail sentence of not less than 20 days;

502 (B) impose a jail sentence of not less than 10 days in addition to home confinement of
503 not fewer than 60 consecutive days through the use of electronic monitoring that includes a
504 substance abuse testing instrument in accordance with Section 41-6a-506; or

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

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

509 (iii) order the individual to participate in an assessment, if it is found appropriate by a
510 screening under Subsection (5)(a)(ii);

511 (iv) order the individual to participate in an educational series if the court does not
512 order substance abuse treatment as described under Subsection (5)(b);

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

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

515 (vii) order the installation of an ignition interlock system as described in Section
516 41-6a-518;

517 (viii) (A) order the individual to pay the administrative impound fee described in
518 Section 41-6a-1406; or

519 (B) if the administrative impound fee was paid by a party described in Subsection
520 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
521 reimburse the party; or

522 (ix) (A) order the individual to pay the towing and storage fees described in Section
523 72-9-603; or

524 (B) if the towing and storage fees were paid by a party described in Subsection
525 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
526 reimburse the party; and

527 (b) the court may:

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

530 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section
531 41-6a-515.5 if the individual is 21 years old or older; or

532 (iii) order a combination of Subsections (5)(b)(i) and (ii).

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

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

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

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

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

545 (a) the court shall:

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

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

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

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

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

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

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

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

559 (B) if the administrative impound fee was paid by a party described in Subsection
560 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
561 reimburse the party; or

562 (viii) (A) order the individual to pay the towing and storage fees described in Section
563 72-9-603; or

564 (B) if the towing and storage fees were paid by a party described in Subsection
565 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
566 reimburse the party; and

567 (b) the court may:

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

570 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section
571 41-6a-515.5 if the individual is 21 years old or older; or

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

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

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

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

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

581 (9) Under Subsection [~~41-6a-503(3)~~] 41-6a-502(2)(c), if the court suspends the
582 execution of a prison sentence and places the defendant on probation where there is admissible
583 evidence that the individual had a blood or breath alcohol level of .16 or higher, had a blood or

584 breath alcohol level of .05 in addition to any measurable controlled substance, or had a
585 combination of two or more controlled substances in the person's body that were not
586 recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act or
587 prescribed, the court shall impose:

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

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

590 (c) home confinement of not fewer than 120 consecutive days through the use of
591 electronic monitoring that includes a substance abuse testing instrument in accordance with
592 Section [41-6a-506](#); and

593 (d) supervised probation.

594 (10) (a) For Subsection (9) or Subsection [~~41-6a-503(3)(a)~~] [41-6a-502\(2\)\(c\)\(i\)](#), the
595 court:

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

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

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

603 (11) Under Subsection [~~41-6a-503(3)~~] [41-6a-502\(2\)\(c\)](#), if the court suspends the
604 execution of a prison sentence and places the defendant on probation with a sentence not
605 described in Subsection (9), the court shall impose:

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

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

608 (c) home confinement of not fewer than 60 consecutive days through the use of
609 electronic monitoring that includes a substance abuse testing instrument in accordance with
610 Section [41-6a-506](#); and

611 (d) supervised probation.

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

614 (ii) A court may suspend requirements as described in Subsection (2), (4), (6), or (8).

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

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

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

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

626 (b) one or more of the following:

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

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

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

633 Section 6. Section 41-6a-518 is amended to read:

634 **41-6a-518. Ignition interlock devices -- Use -- Probationer to pay cost -- Indigency**
635 **-- Fee.**

636 (1) As used in this section:

637 (a) "Commissioner" means the commissioner of the Department of Public Safety.

638 (b) "Employer verification" means written verification from the employer that:

639 (i) the employer is aware that the employee is an interlock restricted driver;

640 (ii) the vehicle the employee is operating for employment purposes is not made
641 available to the employee for personal use;

642 (iii) the business entity that employs the employee is not entirely or partly owned or
643 controlled by the employee;

644 (iv) the employer's auto insurance company is aware that the employee is an interlock
645 restricted driver; and

646 (v) the employee has been added to the employer's auto insurance policy as an operator
647 of the vehicle.

648 (c) "Ignition interlock system" or "system" means a constant monitoring device or any
649 similar device certified by the commissioner that prevents a motor vehicle from being started
650 or continuously operated without first determining the driver's breath alcohol concentration.

651 (d) "Probation provider" means the supervisor and monitor of the ignition interlock
652 system required as a condition of probation who contracts with the court in accordance with
653 Subsections [41-6a-507\(2\)](#) and (3).

654 (2) (a) In addition to any other penalties imposed under Sections [~~41-6a-503~~]
655 [41-6a-502](#) and [41-6a-505](#), and in addition to any requirements imposed as a condition of
656 probation, unless the court determines and states on the record that an ignition interlock system
657 is not necessary for the safety of the community and in the best interest of justice, the court
658 shall require that any person who is convicted of violating Section [41-6a-502](#) and who is
659 granted probation may not operate a motor vehicle during the period of probation unless that
660 motor vehicle is equipped with a functioning, certified ignition interlock system installed and
661 calibrated so that the motor vehicle will not start or continuously operate if the operator's blood
662 alcohol concentration exceeds .02 grams or greater.

663 (b) If a person convicted of violating Section [41-6a-502](#) was under the age of 21 when
664 the violation occurred, the court shall order the installation of the ignition interlock system as a
665 condition of probation.

666 (c) (i) If a person is convicted of a violation of Section [41-6a-502](#) within 10 years of a
667 prior conviction as defined in [~~Subsection 41-6a-501(2)~~] [Section 41-6a-501](#), the court shall
668 order the installation of the interlock ignition system, at the person's expense, for all motor
669 vehicles registered to that person and all motor vehicles operated by that person.

670 (ii) A person who operates a motor vehicle without an ignition interlock device as
671 required under this Subsection (2)(c) is in violation of Section [41-6a-518.2](#).

672 (d) The division shall post the ignition interlock restriction on the electronic record
673 available to law enforcement.

674 (e) This section does not apply to a person convicted of a violation of Section
675 [41-6a-502](#) whose violation does not involve alcohol.

676 (3) If the court imposes the use of an ignition interlock system as a condition of

677 probation, the court shall:

678 (a) stipulate on the record the requirement for and the period of the use of an ignition
679 interlock system;

680 (b) order that an ignition interlock system be installed on each motor vehicle owned or
681 operated by the probationer, at the probationer's expense;

682 (c) immediately notify the Driver License Division and the person's probation provider
683 of the order; and

684 (d) require the probationer to provide proof of compliance with the court's order to the
685 probation provider within 30 days of the order.

686 (4) (a) The probationer shall provide timely proof of installation within 30 days of an
687 order imposing the use of a system or show cause why the order was not complied with to the
688 court or to the probationer's probation provider.

689 (b) The probation provider shall notify the court of failure to comply under Subsection
690 (4)(a).

691 (c) For failure to comply under Subsection (4)(a) or upon receiving the notification
692 under Subsection (4)(b), the court shall order the Driver License Division to suspend the
693 probationer's driving privileges for the remaining period during which the compliance was
694 imposed.

695 (d) Cause for failure to comply means any reason the court finds sufficiently justifiable
696 to excuse the probationer's failure to comply with the court's order.

697 (5) (a) Any probationer required to install an ignition interlock system shall have the
698 system monitored by the manufacturer or dealer of the system for proper use and accuracy at
699 least semiannually and more frequently as the court may order.

700 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the
701 court or the person's probation provider.

702 (ii) The report shall be issued within 14 days following each monitoring.

703 (6) (a) If an ignition interlock system is ordered installed, the probationer shall pay the
704 reasonable costs of leasing or buying and installing and maintaining the system.

705 (b) A probationer may not be excluded from this section for inability to pay the costs,
706 unless:

707 (i) the probationer files an affidavit of indigency in accordance with Section

708 78A-2-302; and

709 (ii) the court enters a finding that the probationer is indigent.

710 (c) In lieu of waiver of the entire amount of the cost, the court may direct the
711 probationer to make partial or installment payments of costs when appropriate.

712 (d) The ignition interlock provider shall cover the costs of waivers by the court under
713 this Subsection (6).

714 (7) (a) If a probationer is required in the course and scope of employment to operate a
715 motor vehicle owned by the probationer's employer, the probationer may operate that motor
716 vehicle without installation of an ignition interlock system only if:

717 (i) the motor vehicle is used in the course and scope of employment;

718 (ii) the employer has been notified that the employee is restricted; and

719 (iii) the employee has employer verification in the employee's possession while
720 operating the employer's motor vehicle.

721 (b) (i) To the extent that an employer-owned motor vehicle is made available to a
722 probationer subject to this section for personal use, no exemption under this section shall apply.

723 (ii) A probationer intending to operate an employer-owned motor vehicle for personal
724 use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock
725 system shall notify the employer and obtain consent in writing from the employer to install a
726 system in the employer-owned motor vehicle.

727 (c) A motor vehicle owned by a business entity that is all or partly owned or controlled
728 by a probationer subject to this section is not a motor vehicle owned by the employer and does
729 not qualify for an exemption under this Subsection (7).

730 (8) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
731 the commissioner shall make rules setting standards for the certification of ignition interlock
732 systems.

733 (b) The standards under Subsection (8)(a) shall require that the system:

734 (i) not impede the safe operation of the motor vehicle;

735 (ii) have features that make circumventing difficult and that do not interfere with the
736 normal use of the motor vehicle;

737 (iii) require a deep lung breath sample as a measure of breath alcohol concentration;

738 (iv) prevent the motor vehicle from being started if the driver's breath alcohol

739 concentration exceeds .02 grams or greater;

740 (v) work accurately and reliably in an unsupervised environment;

741 (vi) resist tampering and give evidence if tampering is attempted;

742 (vii) operate reliably over the range of motor vehicle environments; and

743 (viii) be manufactured by a party who will provide liability insurance.

744 (c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or
745 independent laboratory tests relied upon in certification of ignition interlock systems by other
746 states.

747 (d) A list of certified systems shall be published by the commissioner and the cost of
748 certification shall be borne by the manufacturers or dealers of ignition interlock systems
749 seeking to sell, offer for sale, or lease the systems.

750 (e) (i) In accordance with Section 63J-1-504, the commissioner may establish an
751 annual dollar assessment against the manufacturers of ignition interlock systems distributed in
752 the state for the costs incurred in certifying.

753 (ii) The assessment under Subsection (8)(e)(i) shall be apportioned among the
754 manufacturers on a fair and reasonable basis.

755 (f) The commissioner shall require a provider of an ignition interlock system certified
756 in accordance with this section to comply with the requirements of Title 53, Chapter 3, Part 10,
757 Ignition Interlock System Program Act.

758 (9) A violation of this section is a class C misdemeanor.

759 (10) There shall be no liability on the part of, and no cause of action of any nature shall
760 arise against, the state or its employees in connection with the installation, use, operation,
761 maintenance, or supervision of an interlock ignition system as required under this section.

762 Section 7. Section 41-6a-518.2 is amended to read:

763 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**
764 **interlock system.**

765 (1) As used in this section:

766 (a) "Ignition interlock system" means a constant monitoring device or any similar
767 device that:

768 (i) is in working order at the time of operation or actual physical control; and

769 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection

770 41-6a-518(8).

771 (b) (i) "Interlock restricted driver" means a person who:

772 (A) has been ordered by a court or the Board of Pardons and Parole as a condition of
773 probation or parole not to operate a motor vehicle without an ignition interlock system;

774 (B) within the last 18 months has been convicted of a violation under Section
775 41-6a-502, Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1), or Section 76-5-102.1;

776 (C) (I) within the last three years has been convicted of an offense which would be a
777 conviction as defined under Section 41-6a-501; and

778 (II) the offense described under Subsection (1)(b)(i)(C)(I) is committed within 10 years
779 from the date that one or more prior offenses was committed if the prior offense resulted in a
780 conviction as defined in [~~Subsection 41-6a-501(2)~~] Section 41-6a-501;

781 (D) within the last three years has been convicted of a violation of this section;

782 (E) within the last three years has had the person's driving privilege revoked through an
783 administrative action for refusal to submit to a chemical test under Section 41-6a-520;

784 (F) within the last three years has been convicted of a violation of Section 41-6a-502,
785 Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1), or Section 76-5-102.1 and was under the age of 21
786 at the time the offense was committed;

787 (G) within the last six years has been convicted of a felony violation of Section
788 41-6a-502, Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1), or Section 76-5-102.1 for an offense that
789 occurred after May 1, 2006; or

790 (H) within the last 10 years has been convicted of a violation of Section 76-5-207 for
791 an offense that occurred after May 1, 2006.

792 (ii) "Interlock restricted driver" does not include a person:

793 (A) whose conviction described in Subsection (1)(b)(i)(C)(I) is a conviction under
794 Section 41-6a-502 that does not involve alcohol or a conviction under Section 41-6a-517 and
795 whose prior convictions described in Subsection (1)(b)(i)(C)(II) are all convictions under
796 Section 41-6a-502 that did not involve alcohol or convictions under Section 41-6a-517;

797 (B) whose conviction described in Subsection (1)(b)(i)(B) or (F) is a conviction under
798 Section 41-6a-502 that does not involve alcohol and the convicting court notifies the Driver
799 License Division at the time of sentencing that the conviction does not involve alcohol; or

800 (C) whose conviction described in Subsection (1)(b)(i)(B), (C), or (F) is a conviction

801 under Section 41-6a-502 that does not involve alcohol and the ignition interlock restriction is
802 removed as described in Subsection (7).

803 (2) The division shall post the ignition interlock restriction on a person's electronic
804 record that is available to law enforcement.

805 (3) For purposes of this section, a plea of guilty or no contest to a violation of Section
806 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,
807 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently
808 reduced or dismissed in accordance with the plea in abeyance agreement.

809 (4) An interlock restricted driver who operates or is in actual physical control of a
810 vehicle in the state without an ignition interlock system is guilty of a class B misdemeanor.

811 (5) It is an affirmative defense to a charge of a violation of Subsection (4) if:

812 (a) the interlock restricted driver operated or was in actual physical control of a vehicle
813 owned by the interlock restricted driver's employer;

814 (b) the interlock restricted driver had given written notice to the employer of the
815 interlock restricted driver's interlock restricted status prior to the operation or actual physical
816 control under Subsection (5)(a);

817 (c) the interlock restricted driver had on the interlock restricted driver's person, or in
818 the vehicle, at the time of operation or physical control employer verification, as defined in
819 Subsection 41-6a-518(1); and

820 (d) the operation or actual physical control described in Subsection (5)(a) was in the
821 scope of the interlock restricted driver's employment.

822 (6) The affirmative defense described in Subsection (5) does not apply to:

823 (a) an employer-owned motor vehicle that is made available to an interlock restricted
824 driver for personal use; or

825 (b) a motor vehicle owned by a business entity that is entirely or partly owned or
826 controlled by the interlock restricted driver.

827 (7) (a) An individual with an ignition interlock restriction may petition the division for
828 removal of the restriction if the individual's offense did not involve alcohol.

829 (b) If the division is able to establish that an individual's offense did not involve
830 alcohol, the division may remove the ignition interlock restriction.

831 Section 8. Section 41-6a-520 is amended to read:

832 **41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of**
833 **tests -- Refusal -- Warning, report.**

834 (1) (a) A person operating a motor vehicle in this state is considered to have given the
835 person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for
836 the purpose of determining whether the person was operating or in actual physical control of a
837 motor vehicle while:

838 (i) having a blood or breath alcohol content statutorily prohibited under Section
839 41-6a-502, 41-6a-530, or 53-3-231;

840 (ii) under the influence of alcohol, any drug, or combination of alcohol and any drug
841 under Section 41-6a-502; or

842 (iii) having any measurable controlled substance or metabolite of a controlled
843 substance in the person's body in violation of Section 41-6a-517.

844 (b) A test or tests authorized under this Subsection (1) must be administered at the
845 direction of a peace officer having grounds to believe that person to have been operating or in
846 actual physical control of a motor vehicle while in violation of any provision under Subsections
847 (1)(a)(i) through (iii).

848 (c) (i) The peace officer determines which of the tests are administered and how many
849 of them are administered.

850 (ii) If a peace officer requests more than one test, refusal by a person to take one or
851 more requested tests, even though the person does submit to any other requested test or tests, is
852 a refusal under this section.

853 (d) (i) A person who has been requested under this section to submit to a chemical test
854 or tests of the person's breath, blood, or urine, or oral fluids may not select the test or tests to be
855 administered.

856 (ii) The failure or inability of a peace officer to arrange for any specific chemical test is
857 not a defense to taking a test requested by a peace officer, and it is not a defense in any
858 criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the
859 requested test or tests.

860 (2) (a) A peace officer requesting a test or tests shall warn a person that refusal to
861 submit to the test or tests may result in criminal prosecution, revocation of the person's license
862 to operate a motor vehicle, a five or 10 year prohibition of driving with any measurable or

863 detectable amount of alcohol in the person's body depending on the person's prior driving
864 history, and a three-year prohibition of driving without an ignition interlock device if the
865 person:

866 (i) has been placed under arrest;

867 (ii) has then been requested by a peace officer to submit to any one or more of the
868 chemical tests under Subsection (1); and

869 (iii) refuses to submit to any chemical test requested.

870 (b) (i) Following the warning under Subsection (2)(a), if the person does not
871 immediately request that the chemical test or tests as offered by a peace officer be
872 administered, a peace officer shall, on behalf of the Driver License Division and within 24
873 hours of the arrest, give notice of the Driver License Division's intention to revoke the person's
874 privilege or license to operate a motor vehicle.

875 (ii) When a peace officer gives the notice on behalf of the Driver License Division, the
876 peace officer shall supply to the operator, in a manner specified by the Driver License Division,
877 basic information regarding how to obtain a hearing before the Driver License Division.

878 (c) As a matter of procedure, the peace officer shall submit a signed report, within 10
879 calendar days after the day on which notice is provided under Subsection (2)(b), that:

880 (i) the peace officer had grounds to believe the arrested person was in violation of any
881 provision under Subsections (1)(a)(i) through (iii); and

882 (ii) the person had refused to submit to a chemical test or tests under Subsection (1).

883 (3) Upon the request of the person who was tested, the results of the test or tests shall
884 be made available to the person.

885 (4) (a) The person to be tested may, at the person's own expense, have a physician or a
886 physician assistant of the person's own choice administer a chemical test in addition to the test
887 or tests administered at the direction of a peace officer.

888 (b) The failure or inability to obtain the additional test does not affect admissibility of
889 the results of the test or tests taken at the direction of a peace officer, or preclude or delay the
890 test or tests to be taken at the direction of a peace officer.

891 (c) The additional test shall be subsequent to the test or tests administered at the
892 direction of a peace officer.

893 (5) For the purpose of determining whether to submit to a chemical test or tests, the

894 person to be tested does not have the right to consult an attorney or have an attorney, physician,
895 or other person present as a condition for the taking of any test.

896 (6) Notwithstanding the provisions in this section, a blood test taken under this section
897 is subject to Section 77-23-213.

898 ~~[(7) A person is guilty of refusing a chemical test if a peace officer has issued the~~
899 ~~warning required in Subsection (2)(a) and the person refuses to submit to a test of the person's~~
900 ~~blood under Subsection (1) after a court has issued a warrant to draw and test the blood.]~~

901 ~~[(8) A person who violates Subsection (7) commits an offense classified as a~~
902 ~~misdemeanor or felony in accordance with Subsections 41-6a-503(1), (2), and (3).]~~

903 ~~[(9) As part of any sentence for a conviction of violating this section, the court shall~~
904 ~~impose the same sentencing as outlined for driving under the influence violations in Section~~
905 ~~41-6a-505, based on whether this is a first, second, or subsequent conviction as defined by~~
906 ~~Subsection 41-6a-501(2), with the following modifications:]~~

907 ~~[(a) any jail sentence shall be 24 consecutive hours more than would be required under~~
908 ~~Section 41-6a-505;]~~

909 ~~[(b) any fine imposed shall be \$100 more than would be required under Section~~
910 ~~41-6a-505; and]~~

911 ~~[(c) the court shall order one or more of the following:]~~

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

914 ~~[(ii) the imposition of an ankle attached continuous transdermal alcohol monitoring~~
915 ~~device as a condition of probation for the individual; or]~~

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

918 ~~[(10) (a) The offense of refusal to submit to a chemical test under this section does not~~
919 ~~merge with any violation of Section 32B-4-409, 41-6a-502, 41-6a-517, or 41-6a-530.]~~

920 ~~[(b) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense~~
921 ~~of refusal to submit to a chemical test under this section may not be held in abeyance.]~~

922 Section 9. Section 41-6a-520.1 is enacted to read:

923 **41-6a-520.1. Refusing a chemical test.**

924 (1) An actor commits refusing a chemical test if:

- 925 (a) a peace officer issues the warning required in Subsection [41-6a-520\(2\)\(a\)](#);
926 (b) a court issues a warrant to draw and test the blood; and
927 (c) after Subsections (1)(a) and (b), the actor refuses to submit to a test of the actor's
928 blood.
- 929 (2) (a) A violation of Subsection (1) is a class B misdemeanor.
930 (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A
931 misdemeanor if the actor:
- 932 (i) has a passenger younger than 16 years old in the vehicle at the time the officer had
933 grounds to believe the actor was driving under the influence;
934 (ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle
935 at the time the officer had grounds to believe the actor was driving under the influence;
936 (iii) also violated Section [41-6a-712](#) or [41-6a-714](#) at the time of the offense; or
937 (iv) has one prior conviction within 10 years of:
- 938 (A) the current conviction under Subsection (1); or
939 (B) the commission of the offense upon which the current conviction is based.
- 940 (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree
941 felony if:
- 942 (i) the actor has two or more prior convictions, each of which is within 10 years of:
943 (A) the current conviction; or
944 (B) the commission of the offense upon which the current conviction is based; or
945 (ii) the current conviction is at any time after a conviction of:
946 (A) a violation of Section [76-5-207](#);
947 (B) a felony violation of this section, Section [76-5-102.1](#), [41-6a-502](#), or a statute
948 previously in effect in this state that would constitute a violation of this section; or
949 (C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of
950 conviction is reduced under Section [76-3-402](#).
- 951 (3) As part of any sentence for a conviction of violating this section, the court shall
952 impose the same sentencing as outlined for driving under the influence violations in Section
953 [41-6a-505](#), based on whether this is a first, second, or subsequent conviction, with the
954 following modifications:
- 955 (a) any jail sentence shall be 24 consecutive hours more than is required under Section

956 [41-6a-505](#);

957 (b) any fine imposed shall be \$100 more than is required under Section [41-6a-505](#); and

958 (c) the court shall order one or more of the following:

959 (i) the installation of an ignition interlock system as a condition of probation for the

960 individual, in accordance with Section [41-6a-518](#);

961 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring

962 device as a condition of probation for the individual; or

963 (iii) the imposition of home confinement through the use of electronic monitoring, in

964 accordance with Section [41-6a-506](#).

965 (4) (a) The offense of refusing a chemical test under this section does not merge with

966 any violation of Section [32B-4-409](#), [41-6a-502](#), [41-6a-517](#), or [41-6a-530](#).

967 (b) In accordance with Subsection [77-2a-3](#)(8), a guilty or no contest plea to an offense

968 of refusal to submit to a chemical test under this section may not be held in abeyance.

969 (5) An actor is guilty of a separate offense under Subsection (1) for each passenger in

970 the vehicle that is younger than 16 years old at the time the officer had grounds to believe the

971 actor was driving under the influence.

972 Section 10. Section **41-6a-521.1** is amended to read:

973 **41-6a-521.1. Driver license denial or revocation for a criminal conviction for a**

974 **refusal to submit to a chemical test violation.**

975 (1) The Driver License Division shall, if the person is 21 years [~~of age~~] old or older at

976 the time of arrest:

977 (a) revoke for a period of 18 months the operator's license of a person convicted for the

978 first time under Subsection [~~41-6a-520(7)~~] [41-6a-520.1\(1\)](#); or

979 (b) revoke for a period of 36 months the license of a person if:

980 (i) the person has a prior conviction as defined under [~~Subsection [41-6a-501\(2\)](#)~~]

981 Section [41-6a-501](#); and

982 (ii) the current refusal to submit to a chemical test violation under Subsection

983 [~~41-6a-520(7)~~] [41-6a-520.1\(1\)](#) is committed within a period of 10 years from the date of the

984 prior violation.

985 (2) The Driver License Division shall, if the person is under 21 years [~~of age~~] old at the

986 time of arrest:

987 (a) revoke the person's driver license until the person is 21 years ~~[of age]~~ old or for a
988 period of two years, whichever is longer; ~~[or]~~

989 (b) revoke the person's driver license until the person is 21 years ~~[of age]~~ old or for a
990 period of 36 months, whichever is longer, if:

991 (i) the person has a prior conviction as defined under ~~[Subsection 41-6a-501(2)]~~
992 Section 41-6a-501; and

993 (ii) the current refusal to submit to a chemical test violation under Subsection
994 ~~[41-6a-520(7)]~~ 41-6a-520.1(1) is committed within a period of 10 years from the date of the
995 prior violation; or

996 (c) if the person has not been issued an operator license:

997 (i) deny the person's application for a license or learner's permit until the person is 21
998 years ~~[of age]~~ old or for a period of two years, whichever is longer; or

999 (ii) deny the person's application for a license or learner's permit until the person is 21
1000 years ~~[of age]~~ old or for a period of 36 months, whichever is longer, if:

1001 (A) the person has a prior conviction as defined under ~~[Subsection 41-6a-501(2)]~~
1002 Section 41-6a-501; and

1003 (B) the current refusal to submit to a chemical test violation under Subsection
1004 ~~[41-6a-520(7)]~~ 41-6a-520.1(1) is committed within a period of 10 years from the date of the
1005 prior violation.

1006 (3) The Driver License Division shall suspend or revoke the license of a person as
1007 ordered by the court under Subsection (5).

1008 (4) The Driver License Division shall subtract from any revocation period the number
1009 of days for which a license was previously revoked under Section ~~[53-3-221]~~ 41-6a-521 if the
1010 previous revocation was based on the same occurrence upon which the record of conviction
1011 under Subsection ~~[41-6a-520(7)]~~ 41-6a-520.1(1) is based.

1012 (5) (a) (i) In addition to any other penalties provided in this section, a court may order
1013 the driver license of a person who is convicted of a violation of Subsection ~~[41-6a-520(7)]~~
1014 41-6a-520.1(1) to be revoked for an additional period of 90 days, 120 days, 180 days, one year,
1015 or two years to remove from the highways those persons who have shown they are safety
1016 hazards.

1017 (ii) The additional revocation period provided in this Subsection (5) shall begin the

1018 date on which the individual would be eligible to reinstate the individual's driving privilege for
1019 a violation of Subsection [~~41-6a-520(7)~~] 41-6a-520.1(1).

1020 (b) If the court suspends or revokes the person's license under this Subsection (5), the
1021 court shall prepare and send to the Driver License Division an order to suspend or revoke that
1022 person's driving privileges for a specified period of time.

1023 (6) (a) The court shall notify the Driver License Division if a person fails to:

1024 (i) complete all court ordered:

1025 (A) screening;

1026 (B) assessment;

1027 (C) educational series;

1028 (D) substance abuse treatment; and

1029 (E) hours of work in a compensatory-service work program; or

1030 (ii) pay all fines and fees, including fees for restitution and treatment costs.

1031 (b) Upon receiving the notification described in Subsection (6)(a), the Driver License
1032 Division shall suspend the person's driving privilege in accordance with Subsections
1033 53-3-221(2) and (3).

1034 Section 11. Section ~~41-6a-527~~ is amended to read:

1035 **41-6a-527. Seizure and impoundment of vehicles by peace officers -- Impound**
1036 **requirements -- Removal of vehicle by owner.**

1037 (1) If a peace officer arrests, cites, or refers for administrative action the operator of a
1038 vehicle for violating Section 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-520.1,
1039 41-6a-530, 41-6a-606, 53-3-231, Subsections 53-3-227(3)(a)(i) through [~~(vi)~~] (vii), Subsection
1040 [~~53-3-227(3)(a)(ix)~~] 53-3-277(3)(a)(x), or a local ordinance similar to Section 41-6a-502 which
1041 complies with Subsection 41-6a-510(1), the peace officer shall seize and impound the vehicle
1042 in accordance with Section 41-6a-1406, except as provided under Subsection (2).

1043 (2) If a registered owner of the vehicle, other than the operator, is present at the time of
1044 arrest, the peace officer may release the vehicle to that registered owner, but only if:

1045 (a) the registered owner:

1046 (i) requests to remove the vehicle from the scene; and

1047 (ii) presents to the peace officer sufficient identification to prove ownership of the
1048 vehicle or motorboat;

1049 (b) the registered owner identifies a driver with a valid operator's license who:
1050 (i) complies with all restrictions of his operator's license; and
1051 (ii) would not, in the judgment of the officer, be in violation of Section 41-6a-502,
1052 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-520.1, 41-6a-530, 53-3-231, or a local ordinance
1053 similar to Section 41-6a-502 which complies with Subsection 41-6a-510(1) if permitted to
1054 operate the vehicle; and

1055 (c) the vehicle itself is legally operable.

1056 (3) If necessary for transportation of a motorboat for impoundment under this section,
1057 the motorboat's trailer may be used to transport the motorboat.

1058 Section 12. Section 41-6a-529 is amended to read:

1059 **41-6a-529. Definitions -- Alcohol restricted drivers.**

1060 (1) As used in this section and Section 41-6a-530, "alcohol restricted driver" means a
1061 person who:

1062 (a) within the last two years:

1063 (i) has been convicted of:

1064 (A) a misdemeanor violation of Section 41-6a-502 or 76-5-102.1;

1065 (B) alcohol, any drug, or a combination of both-related reckless driving under Section
1066 41-6a-512;

1067 (C) impaired driving under Section 41-6a-502.5;

1068 (D) local ordinances similar to Section 41-6a-502 or 76-5-102.1, alcohol, any drug, or
1069 a combination of both-related reckless driving, or impaired driving adopted in compliance with
1070 Section 41-6a-510;

1071 (E) a violation described in Subsections (1)(a)(i)(A) through (D), which judgment of
1072 conviction is reduced under Section 76-3-402; or

1073 (F) statutes or ordinances previously in effect in this state or in effect in any other state,
1074 the United States, or any district, possession, or territory of the United States which would
1075 constitute a violation of Section 41-6a-502 or 76-5-102.1, alcohol, any drug, or a combination
1076 of both-related reckless driving, or impaired driving if committed in this state, including
1077 punishments administered under 10 U.S.C. Sec. 815; or

1078 (ii) has had the person's driving privilege suspended under Section 53-3-223 for an
1079 alcohol-related offense based on an arrest which occurred on or after July 1, 2005;

1080 (b) within the last three years has been convicted of a violation of this section or
1081 Section [41-6a-518.2](#);

1082 (c) within the last five years:

1083 (i) has had the person's driving privilege revoked through an administrative action for
1084 refusal to submit to a chemical test under Section [41-6a-520](#), which refusal occurred on or after
1085 July 1, 2005;

1086 (ii) has been convicted of a misdemeanor conviction for refusal to submit to a chemical
1087 test under Subsection [~~[41-6a-520\(7\)](#)~~] [41-6a-520.1\(1\)](#); or

1088 (iii) has been convicted of a class A misdemeanor violation of Section [41-6a-502](#) or
1089 [76-5-102.1](#) committed on or after July 1, 2008;

1090 (d) within the last 10 years:

1091 (i) has been convicted of an offense described in Subsection (1)(a)(i) which offense
1092 was committed within 10 years of the commission of a prior offense described in Subsection
1093 (1)(a)(i) for which the person was convicted;

1094 (ii) has been convicted of a felony violation of refusal to submit to a chemical test
1095 under Subsection [~~[41-6a-520\(7\)](#)~~] [41-6a-520.1\(1\)](#); or

1096 (iii) has had the person's driving privilege revoked for refusal to submit to a chemical
1097 test and the refusal is within 10 years after:

1098 (A) a prior refusal to submit to a chemical test under Section [41-6a-520](#); or
1099 (B) a prior conviction for an offense described in Subsection (1)(a)(i) which is not
1100 based on the same arrest as the refusal;

1101 (e) at any time has been convicted of:

1102 (i) a violation of Section [76-5-207](#) for an offense that occurred on or after July 1, 2005;
1103 or

1104 (ii) a felony violation of Section [41-6a-502](#) or [76-5-102.1](#) for an offense that occurred
1105 on or after July 1, 2005;

1106 (f) at the time of operation of a vehicle is under 21 years old; or
1107 (g) is a novice learner driver.

1108 (2) For purposes of this section and Section [41-6a-530](#), a plea of guilty or no contest to
1109 a violation described in Subsection (1)(a)(i) which plea was held in abeyance under Title 77,
1110 Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if

1111 the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance
1112 agreement.

1113 Section 13. Section **53-3-218** is amended to read:

1114 **53-3-218. Court to report convictions and may recommend suspension of license**
1115 **-- Severity of speeding violation defined.**

1116 (1) As used in this section, "conviction" means conviction by the court of first
1117 impression or final administrative determination in an administrative traffic proceeding.

1118 (2) (a) Except as provided in Subsection (2)(c), a court having jurisdiction over
1119 offenses committed under this chapter or any other law of this state, or under any municipal
1120 ordinance regulating driving motor vehicles on highways or driving motorboats on the water,
1121 shall forward to the division within five days, an abstract of the court record of the conviction
1122 or plea held in abeyance of any person in the court for a reportable traffic or motorboating
1123 violation of any laws or ordinances, and may recommend the suspension of the license of the
1124 person convicted.

1125 (b) When the division receives a court record of a conviction or plea in abeyance for a
1126 motorboat violation, the division may only take action against a person's driver license if the
1127 motorboat violation is for a violation of Title 41, Chapter 6a, Part 5, Driving Under the
1128 Influence and Reckless Driving.

1129 (c) A court may not forward to the division an abstract of a court record of a conviction
1130 for a violation described in Subsection **53-3-220(1)(c)(i)** [~~or (ii)~~], unless the court found that
1131 the person convicted of the violation was an operator of a motor vehicle at the time of the
1132 violation.

1133 (3) (a) A court may not order the division to suspend a person's driver license based
1134 solely on the person's failure to pay a penalty accounts receivable.

1135 (b) The court may notify the division, and the division may, prior to sentencing,
1136 suspend the driver license of a person who fails to appear if the person is charged with:

1137 (i) an offense of any level that is a moving traffic violation;

1138 (ii) an offense described in Title 41, Chapter 12a, Part 3, Owner's or Operator's
1139 Security Requirement; or

1140 (iii) an offense described in Subsection **53-3-220(1)(a)** or (b).

1141 (4) The abstract shall be made in the form prescribed by the division and shall include:

- 1142 (a) the name, date of birth, and address of the party charged;
- 1143 (b) the license certificate number of the party charged, if any;
- 1144 (c) the registration number of the motor vehicle or motorboat involved;
- 1145 (d) whether the motor vehicle was a commercial motor vehicle;
- 1146 (e) whether the motor vehicle carried hazardous materials;
- 1147 (f) whether the motor vehicle carried 16 or more occupants;
- 1148 (g) whether the driver presented a commercial driver license;
- 1149 (h) the nature of the offense;
- 1150 (i) whether the offense involved an accident;
- 1151 (j) the driver's blood alcohol content, if applicable;
- 1152 (k) if the offense involved a speeding violation:
 - 1153 (i) the posted speed limit;
 - 1154 (ii) the actual speed; and
 - 1155 (iii) whether the speeding violation occurred on a highway that is part of the interstate
 - 1156 system as defined in Section [72-1-102](#);
- 1157 (l) the date of the hearing;
- 1158 (m) the plea;
- 1159 (n) the judgment or whether bail was forfeited; and
- 1160 (o) the severity of the violation, which shall be graded by the court as "minimum,"
- 1161 "intermediate," or "maximum" as established in accordance with Subsection [53-3-221](#)(4).
- 1162 (5) When a convicted person secures a judgment of acquittal or reversal in any
- 1163 appellate court after conviction in the court of first impression, the division shall reinstate the
- 1164 convicted person's license immediately upon receipt of a certified copy of the judgment of
- 1165 acquittal or reversal.
- 1166 (6) Upon a conviction for a violation of the prohibition on using a wireless
- 1167 communication device while operating a moving motor vehicle under Section [41-6a-1716](#), a
- 1168 judge may order a suspension of the convicted person's license for a period of three months.
- 1169 (7) Upon a conviction for a violation of careless driving under Section [41-6a-1715](#) that
- 1170 causes or results in the death of another person, a judge may order a revocation of the convicted
- 1171 person's license for a period of one year.
- 1172 Section 14. Section [53-3-220](#) is amended to read:

1173 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
1174 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
1175 **Limited driving privileges.**

1176 (1) (a) The division shall immediately revoke or, when this chapter, Title 41, Chapter
1177 6a, Traffic Code, or Section 76-5-303, specifically provides for denial, suspension, or
1178 disqualification, the division shall deny, suspend, or disqualify the license of a person upon
1179 receiving a record of the person's conviction for:

1180 (i) manslaughter or negligent homicide resulting from driving a motor vehicle,
1181 negligently operating a vehicle resulting in death under Section 76-5-207, or automobile
1182 homicide involving using a handheld wireless communication device while driving under
1183 Section 76-5-207.5;

1184 (ii) driving or being in actual physical control of a motor vehicle while under the
1185 influence of alcohol, any drug, or combination of them to a degree that renders the person
1186 incapable of safely driving a motor vehicle as prohibited in Section 41-6a-502 or as prohibited
1187 in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

1188 (iii) driving or being in actual physical control of a motor vehicle while having a blood
1189 or breath alcohol content as prohibited in Section 41-6a-502 or as prohibited in an ordinance
1190 that complies with the requirements of Subsection 41-6a-510(1);

1191 (iv) perjury or the making of a false affidavit to the division under this chapter, Title
1192 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
1193 regulating driving on highways;

1194 (v) any felony under the motor vehicle laws of this state;

1195 (vi) any other felony in which a motor vehicle is used to facilitate the offense;

1196 (vii) failure to stop and render aid as required under the laws of this state if a motor
1197 vehicle accident results in the death or personal injury of another;

1198 (viii) two charges of reckless driving, impaired driving, or any combination of reckless
1199 driving and impaired driving committed within a period of 12 months; but if upon a first
1200 conviction of reckless driving or impaired driving the judge or justice recommends suspension
1201 of the convicted person's license, the division may after a hearing suspend the license for a
1202 period of three months;

1203 (ix) failure to bring a motor vehicle to a stop at the command of a law enforcement

1204 officer as required in Section [41-6a-210](#);

1205 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that
1206 requires disqualification;

1207 (xi) a felony violation of Section [76-10-508](#) or [76-10-508.1](#) involving discharging or
1208 allowing the discharge of a firearm from a vehicle;

1209 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or
1210 incendiary device from a vehicle in violation of Subsection [76-10-306\(4\)\(b\)](#);

1211 (xiii) operating or being in actual physical control of a motor vehicle while having any
1212 measurable controlled substance or metabolite of a controlled substance in the person's body in
1213 violation of Section [41-6a-517](#);

1214 (xiv) operating or being in actual physical control of a motor vehicle while having any
1215 measurable or detectable amount of alcohol in the person's body in violation of Section
1216 [41-6a-530](#);

1217 (xv) engaging in a motor vehicle speed contest or exhibition of speed on a highway in
1218 violation of Section [41-6a-606](#);

1219 (xvi) operating or being in actual physical control of a motor vehicle in this state
1220 without an ignition interlock system in violation of Section [41-6a-518.2](#); or

1221 (xvii) refusal of a chemical test under Subsection [~~[41-6a-520\(7\)](#)~~] [41-6a-520.1\(1\)](#).

1222 (b) The division shall immediately revoke the license of a person upon receiving a
1223 record of an adjudication under Section [80-6-701](#) for:

1224 (i) a felony violation of Section [76-10-508](#) or [76-10-508.1](#) involving discharging or
1225 allowing the discharge of a firearm from a vehicle; or

1226 (ii) using, allowing the use of, or causing to be used any explosive, chemical, or
1227 incendiary device from a vehicle in violation of Subsection [76-10-306\(4\)\(b\)](#).

1228 (c) (i) Except when action is taken under Section [53-3-219](#) for the same offense, upon
1229 receiving a record of conviction, the division shall immediately suspend for six months the
1230 license of the convicted person if the person was convicted of violating any one of the
1231 following offenses while the person was an operator of a motor vehicle, and the court finds that
1232 a driver license suspension is likely to reduce recidivism and is in the interest of public safety:

1233 [~~(i) any violation of:~~]

1234 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

1235 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

1236 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act;

1237 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; ~~or~~

1238 (E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or

1239 ~~[(ii)]~~ (F) any criminal offense that prohibits~~[(A)]~~ possession, distribution,

1240 manufacture, cultivation, sale, or transfer of any substance that is prohibited under the acts

1241 described in ~~[Subsection (1)(c)(i); or (B)]~~ Subsections (1)(c)(i)(A) through (E), or the attempt

1242 or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance that

1243 is prohibited under the acts described in ~~[Subsection (1)(c)(i)]~~ Subsections (1)(c)(i)(A) through

1244 (E).

1245 ~~[(iii)]~~ (ii) Notwithstanding the provisions in ~~[this]~~ Subsection (1)(c)(i), the division

1246 shall reinstate a person's driving privilege before completion of the suspension period imposed

1247 under ~~[this]~~ Subsection (1)(c)(i) if the reporting court notifies the Driver License Division, in a

1248 manner specified by the division, that the defendant is participating in or has successfully

1249 completed a drug court program as defined in Section [78A-5-201](#).

1250 ~~[(iv)]~~ (iii) If a person's driving privilege is reinstated under Subsection ~~[(1)(c)(iii);~~

1251 (1)(c)(ii), the person is required to pay the license reinstatement fees under Subsection

1252 [53-3-105\(26\)](#).

1253 ~~[(v)]~~ (iv) The court shall notify the division, in a manner specified by the division, if a

1254 person fails to complete all requirements of the drug court program.

1255 ~~[(vi)]~~ (v) Upon receiving the notification described in Subsection ~~[(1)(c)(v);~~ (1)(c)(iv),

1256 the division shall suspend the person's driving privilege for a period of six months from the

1257 date of the notice, and no days shall be subtracted from the six-month suspension period for

1258 which a driving privilege was previously suspended under ~~[this]~~ Subsection (1)(c)(i).

1259 (d) (i) The division shall immediately suspend a person's driver license for conviction

1260 of the offense of theft of motor vehicle fuel under Section [76-6-404.7](#) if the division receives:

1261 (A) an order from the sentencing court requiring that the person's driver license be

1262 suspended; and

1263 (B) a record of the conviction.

1264 (ii) An order of suspension under this section is at the discretion of the sentencing

1265 court, and may not be for more than 90 days for each offense.

1266 (e) (i) The division shall immediately suspend for one year the license of a person upon
1267 receiving a record of:

1268 (A) conviction for the first time for a violation under Section 32B-4-411; or

1269 (B) an adjudication under Section 80-6-701 for a violation under Section 32B-4-411.

1270 (ii) The division shall immediately suspend for a period of two years the license of a
1271 person upon receiving a record of:

1272 (A) (I) conviction for a second or subsequent violation under Section 32B-4-411; and

1273 (II) the violation described in Subsection (1)(e)(ii)(A)(I) is within 10 years of a prior
1274 conviction for a violation under Section 32B-4-411; or

1275 (B) (I) a second or subsequent adjudication under Section 80-6-701 for a violation
1276 under Section 32B-4-411; and

1277 (II) the adjudication described in Subsection (1)(e)(ii)(B)(I) is within 10 years of a prior
1278 adjudication under Section 80-6-701 for a violation under Section 32B-4-411.

1279 (iii) Upon receipt of a record under Subsection (1)(e)(i) or (ii), the division shall:

1280 (A) for a conviction or adjudication described in Subsection (1)(e)(i):

1281 (I) impose a suspension for one year beginning on the date of conviction; or

1282 (II) if the person is under the age of eligibility for a driver license, impose a suspension
1283 that begins on the date of conviction and continues for one year beginning on the date of
1284 eligibility for a driver license; or

1285 (B) for a conviction or adjudication described in Subsection (1)(e)(ii):

1286 (I) impose a suspension for a period of two years; or

1287 (II) if the person is under the age of eligibility for a driver license, impose a suspension
1288 that begins on the date of conviction and continues for two years beginning on the date of
1289 eligibility for a driver license.

1290 (iv) Upon receipt of the first order suspending a person's driving privileges under
1291 Section 32B-4-411, the division shall reduce the suspension period under Subsection (1)(e)(i) if
1292 ordered by the court in accordance with Subsection 32B-4-411(3)(a).

1293 (v) Upon receipt of the second or subsequent order suspending a person's driving
1294 privileges under Section 32B-4-411, the division shall reduce the suspension period under
1295 Subsection (1)(e)(ii) if ordered by the court in accordance with Subsection 32B-4-411(3)(b).

1296 (2) The division shall extend the period of the first denial, suspension, revocation, or

1297 disqualification for an additional like period, to a maximum of one year for each subsequent
1298 occurrence, upon receiving:

1299 (a) a record of the conviction of any person on a charge of driving a motor vehicle
1300 while the person's license is denied, suspended, revoked, or disqualified;

1301 (b) a record of a conviction of the person for any violation of the motor vehicle law in
1302 which the person was involved as a driver;

1303 (c) a report of an arrest of the person for any violation of the motor vehicle law in
1304 which the person was involved as a driver; or

1305 (d) a report of an accident in which the person was involved as a driver.

1306 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is
1307 driving while the person's license is denied, suspended, disqualified, or revoked, the person is
1308 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,
1309 or revocation originally imposed under Section [53-3-221](#).

1310 (4) (a) The division may extend to a person the limited privilege of driving a motor
1311 vehicle to and from the person's place of employment or within other specified limits on
1312 recommendation of the judge in any case where a person is convicted of any of the offenses
1313 referred to in Subsections (1) and (2) except:

1314 (i) those offenses referred to in Subsections (1)(a)(i), (ii), (iii), (xi), (xii), (xiii), (1)(b),
1315 and (1)(c)(i); and

1316 (ii) those offenses referred to in Subsection (2) when the original denial, suspension,
1317 revocation, or disqualification was imposed because of a violation of Section [41-6a-502](#),
1318 [41-6a-517](#), a local ordinance that complies with the requirements of Subsection [41-6a-510\(1\)](#),
1319 Section [41-6a-520](#), [41-6a-520.1](#), [76-5-102.1](#), or [76-5-207](#), or a criminal prohibition that the
1320 person was charged with violating as a result of a plea bargain after having been originally
1321 charged with violating one or more of these sections or ordinances, unless:

1322 (A) the person has had the period of the first denial, suspension, revocation, or
1323 disqualification extended for a period of at least three years;

1324 (B) the division receives written verification from the person's primary care physician
1325 that:

1326 (I) to the physician's knowledge the person has not used any narcotic drug or other
1327 controlled substance except as prescribed by a licensed medical practitioner within the last

1328 three years; and

1329 (II) the physician is not aware of any physical, emotional, or mental impairment that
1330 would affect the person's ability to operate a motor vehicle safely; and

1331 (C) for a period of one year prior to the date of the request for a limited driving
1332 privilege:

1333 (I) the person has not been convicted of a violation of any motor vehicle law in which
1334 the person was involved as the operator of the vehicle;

1335 (II) the division has not received a report of an arrest for a violation of any motor
1336 vehicle law in which the person was involved as the operator of the vehicle; and

1337 (III) the division has not received a report of an accident in which the person was
1338 involved as an operator of a vehicle.

1339 (b) (i) Except as provided in Subsection (4)(b)(ii), the discretionary privilege
1340 authorized in this Subsection (4):

1341 (A) is limited to when undue hardship would result from a failure to grant the
1342 privilege; and

1343 (B) may be granted only once to any person during any single period of denial,
1344 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,
1345 or disqualification.

1346 (ii) The discretionary privilege authorized in Subsection (4)(a)(ii):

1347 (A) is limited to when the limited privilege is necessary for the person to commute to
1348 school or work; and

1349 (B) may be granted only once to any person during any single period of denial,
1350 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,
1351 or disqualification.

1352 (c) A limited CDL may not be granted to a person disqualified under Part 4, Uniform
1353 Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or
1354 denied under this chapter.

1355 Section 15. Section **53-3-227** is amended to read:

1356 **53-3-227. Driving a motor vehicle prohibited while driving privilege denied,**
1357 **suspended, disqualified, or revoked -- Penalties.**

1358 (1) A person whose driving privilege has been denied, suspended, disqualified, or

1359 revoked under this chapter or under the laws of the state in which the person's driving privilege
1360 was granted and who drives any motor vehicle upon the highways of this state while that
1361 driving privilege is denied, suspended, disqualified, or revoked shall be punished as provided
1362 in this section.

1363 (2) A person convicted of a violation of Subsection (1), other than a violation specified
1364 in Subsection (3), is guilty of a class C misdemeanor.

1365 (3) (a) A person is guilty of a class B misdemeanor if the person's conviction under
1366 Subsection (1) is based on the person driving a motor vehicle while the person's driving
1367 privilege is suspended, disqualified, or revoked for:

1368 (i) a refusal to submit to a chemical test under Section [41-6a-520](#);

1369 (ii) a violation of Section [41-6a-520.1](#);

1370 ~~(ii)~~ (iii) a violation of Section [41-6a-502](#);

1371 ~~(iii)~~ (iv) a violation of a local ordinance that complies with the requirements of
1372 Section [41-6a-510](#);

1373 ~~(iv)~~ (v) a violation of Section [41-6a-517](#);

1374 ~~(v)~~ (vi) a violation of Section [76-5-207](#);

1375 ~~(vi)~~ (vii) a criminal action that the person plead guilty to as a result of a plea bargain
1376 after having been originally charged with violating one or more of the sections or ordinances
1377 under this Subsection (3);

1378 ~~(vii)~~ (viii) a revocation or suspension which has been extended under Subsection
1379 [53-3-220\(2\)](#);

1380 ~~(viii)~~ (ix) where disqualification is the result of driving a commercial motor vehicle
1381 while the person's CDL is disqualified, suspended, canceled, or revoked under Subsection
1382 [53-3-414\(1\)](#); or

1383 ~~(ix)~~ (x) a violation of Section [41-6a-530](#).

1384 (b) A person is guilty of a class B misdemeanor if the person's conviction under
1385 Subsection (1) is based on the person driving a motor vehicle while the person's driving
1386 privilege is suspended, disqualified, or revoked by any state, the United States, or any district,
1387 possession, or territory of the United States for violations corresponding to the violations listed
1388 in Subsection (3)(a).

1389 (c) A fine imposed under this Subsection (3) shall be at least the maximum fine for a

1390 class C misdemeanor under Section 76-3-301.

1391 Section 16. Section 58-37f-201 is amended to read:

1392 **58-37f-201. Controlled substance database -- Creation -- Purpose.**

1393 (1) There is created within the division a controlled substance database.

1394 (2) The division shall administer and direct the functioning of the database in
1395 accordance with this chapter.

1396 (3) The division may, under state procurement laws, contract with another state agency
1397 or a private entity to establish, operate, or maintain the database.

1398 (4) The division shall, in collaboration with the board, determine whether to operate
1399 the database within the division or contract with another entity to operate the database, based
1400 on an analysis of costs and benefits.

1401 (5) The purpose of the database is to contain:

1402 (a) the data described in Section 58-37f-203 regarding prescriptions for dispensed
1403 controlled substances;

1404 (b) data reported to the division under Section 26-21-26 regarding poisoning or
1405 overdose;

1406 (c) data reported to the division under Subsection [~~41-6a-502(4)~~] 41-6a-502(5) or
1407 41-6a-502.5(5)(b) regarding convictions for driving under the influence of a prescribed
1408 controlled substance or impaired driving; and

1409 (d) data reported to the division under Subsection 58-37-8(1)(e) or 58-37-8(2)(g)
1410 regarding certain violations of [~~the~~] Chapter37, Utah Controlled Substances Act.

1411 (6) The division shall maintain the database in an electronic file or by other means
1412 established by the division to facilitate use of the database for identification of:

1413 (a) prescribing practices and patterns of prescribing and dispensing controlled
1414 substances;

1415 (b) practitioners prescribing controlled substances in an unprofessional or unlawful
1416 manner;

1417 (c) individuals receiving prescriptions for controlled substances from licensed
1418 practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet
1419 in quantities or with a frequency inconsistent with generally recognized standards of dosage for
1420 that controlled substance;

- 1421 (d) individuals presenting forged or otherwise false or altered prescriptions for
1422 controlled substances to a pharmacy;
- 1423 (e) individuals admitted to a general acute hospital for poisoning or overdose involving
1424 a prescribed controlled substance; and
- 1425 (f) individuals convicted for:
- 1426 (i) driving under the influence of a prescribed controlled substance that renders the
1427 individual incapable of safely operating a vehicle;
- 1428 (ii) driving while impaired, in whole or in part, by a prescribed controlled substance; or
1429 (iii) certain violations of [the] Chapter 37, Utah Controlled Substances Act.
- 1430 Section 17. Section **58-37f-703** is amended to read:

1431 **58-37f-703. Entering certain convictions into the database and reporting them to**
1432 **practitioners.**

1433 (1) When the division receives a report from a court under Subsection [~~41-6a-502(4)~~]
1434 ~~41-6a-502(5)~~ or ~~41-6a-502.5(5)(b)~~ relating to a conviction for driving under the influence of, or
1435 while impaired by, a prescribed controlled substance, the division shall:

- 1436 (a) daily enter into the database the information supplied in the report, including the
1437 date on which the person was convicted;
- 1438 (b) attempt to identify, through the database, each practitioner who may have
1439 prescribed the controlled substance to the convicted person; and
- 1440 (c) provide each practitioner identified under Subsection (1)(b) with:
- 1441 (i) a copy of the information provided by the court; and
- 1442 (ii) the information obtained from the database that led the division to determine that
1443 the practitioner receiving the information may have prescribed the controlled substance to the
1444 convicted person.

1445 (2) It is the intent of the Legislature that the information provided under Subsection
1446 (1)(b) is provided for the purpose of assisting the practitioner in:

- 1447 (a) discussing the manner in which the controlled substance may impact the convicted
1448 person's driving;
- 1449 (b) advising the convicted person on measures that may be taken to avoid adverse
1450 impacts of the controlled substance on future driving; and
- 1451 (c) making decisions regarding future prescriptions written for the convicted person.

1452 (3) Beginning on July 1, 2010, the division shall, in accordance with Section
1453 63J-1-504, increase the licensing fee described in Subsection 58-37-6(1)(b) to pay the startup
1454 and ongoing costs of the division for complying with the requirements of this section.

1455 Section 18. Section 76-5-102.1 is amended to read:

1456 **76-5-102.1. Negligently operating a vehicle resulting in injury.**

1457 (1) As used in this section:

1458 (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.

1459 (b) "Drug" means the same as that term is defined in Section 76-5-207.

1460 (c) "Negligent" or "negligence" means the same as that term is defined in Section
1461 76-5-207.

1462 (d) "Vehicle" means the same as that term is defined in Section 41-6a-501.

1463 (2) An actor commits negligently operating a vehicle resulting in injury if the actor:

1464 (a) (i) operates a vehicle in a negligent manner causing bodily injury to another; and

1465 (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test
1466 shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the
1467 time of the test;

1468 (B) is under the influence of alcohol, a drug, or the combined influence of alcohol and
1469 a drug to a degree that renders the actor incapable of safely operating a vehicle; or

1470 (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of
1471 operation; or

1472 (b) (i) operates a vehicle in a criminally negligent manner causing bodily injury to
1473 another; and

1474 (ii) has in the actor's body any measurable amount of a controlled substance.

1475 (3) Except as provided in Subsection (4), a violation of Subsection (2) is:

1476 (a) (i) a class A misdemeanor; or

1477 (ii) a third degree felony if the bodily injury is serious bodily injury; and

1478 (b) a separate offense for each victim suffering bodily injury as a result of the actor's
1479 violation of this section, regardless of whether the injuries arise from the same episode of
1480 driving.

1481 (4) An actor is not guilty of negligently operating a vehicle resulting in injury under
1482 Subsection (2)(b) if:

1483 (a) the controlled substance was obtained under a valid prescription or order, directly
1484 from a practitioner while acting in the course of the practitioner's professional practice, or as
1485 otherwise authorized by Title 58, Occupations and Professions;

1486 (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or

1487 (c) the actor possessed, in the actor's body, a controlled substance listed in Section
1488 [58-37-4.2](#) if:

1489 (i) the actor is the subject of medical research conducted by a holder of a valid license
1490 to possess controlled substances under Section [58-37-6](#); and

1491 (ii) the substance was administered to the actor by the medical researcher.

1492 (5) (a) A judge imposing a sentence under this section may consider:

1493 (i) the sentencing guidelines developed in accordance with Section [63M-7-404](#);

1494 (ii) the defendant's history;

1495 (iii) the facts of the case;

1496 (iv) aggravating and mitigating factors; or

1497 (v) any other relevant fact.

1498 (b) The judge may not impose a lesser sentence than would be required for a conviction
1499 based on the defendant's history under Section [41-6a-505](#).

1500 (c) The standards for chemical breath analysis under Section [41-6a-515](#) and the
1501 provisions for the admissibility of chemical test results under Section [41-6a-516](#) apply to
1502 determination and proof of blood alcohol content under this section.

1503 (d) A calculation of blood or breath alcohol concentration under this section shall be
1504 made in accordance with Subsection [~~[41-6a-502\(2\)](#)~~] [41-6a-502\(3\)](#).

1505 (e) Except as provided in Subsection (4), the fact that an actor charged with violating
1506 this section is or has been legally entitled to use alcohol or a drug is not a defense.

1507 (f) Evidence of a defendant's blood or breath alcohol content or drug content is
1508 admissible except if prohibited by the Utah Rules of Evidence, the United States Constitution,
1509 or the Utah Constitution.

1510 (g) In accordance with Subsection [77-2a-3\(8\)](#), a guilty or no contest plea to an offense
1511 described in this section may not be held in abeyance.

1512 Section 19. Section [76-5-207](#) is amended to read:

1513 **[76-5-207](#). Negligently operating a vehicle resulting in death -- Penalties --**

1514 **Evidence.**

1515 (1) (a) As used in this section:

1516 (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.

1517 (ii) "Criminally negligent" means the same as that term is described in Subsection

1518 76-2-103(4).

1519 (iii) "Drug" means:

1520 (A) a controlled substance;

1521 (B) a drug as defined in Section 58-37-2; or

1522 (C) a substance that, when knowingly, intentionally, or recklessly taken into the human
1523 body, can impair the ability of an individual to safely operate a vehicle.1524 (iv) "Negligent" or "negligence" means simple negligence, the failure to exercise that
1525 degree of care that reasonable and prudent persons exercise under like or similar circumstances.

1526 (v) "Vehicle" means the same as that term is defined in Section 41-6a-501.

1527 (b) Terms defined in Section 76-1-101.5 apply to this section.

1528 (2) An actor commits negligently operating a vehicle resulting in death if the actor:

1529 (a) (i) operates a vehicle in a negligent or criminally negligent manner causing the

1530 death of another individual;

1531 (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test
1532 shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the
1533 time of the test;1534 (B) is under the influence of alcohol, any drug, or the combined influence of alcohol
1535 and any drug to a degree that renders the actor incapable of safely operating a vehicle; or1536 (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of
1537 operation; or

1538 (b) (i) operates a vehicle in a criminally negligent manner causing death to another; and

1539 (ii) has in the actor's body any measurable amount of a controlled substance.

1540 (3) Except as provided in Subsection (4), an actor who violates Subsection (2) is guilty

1541 of:

1542 (a) a second degree felony; and

1543 (b) a separate offense for each victim suffering death as a result of the actor's violation

1544 of this section, regardless of whether the deaths arise from the same episode of driving.

1545 (4) An actor is not guilty of a violation of negligently operating a vehicle resulting in
1546 death under Subsection (2)(b) if:

1547 (a) the controlled substance was obtained under a valid prescription or order, directly
1548 from a practitioner while acting in the course of the practitioner's professional practice, or as
1549 otherwise authorized by Title 58, Occupations and Professions;

1550 (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or

1551 (c) the actor possessed, in the actor's body, a controlled substance listed in Section
1552 [58-37-4.2](#) if:

1553 (i) the actor is the subject of medical research conducted by a holder of a valid license
1554 to possess controlled substances under Section [58-37-6](#); and

1555 (ii) the substance was administered to the actor by the medical researcher.

1556 (5) (a) A judge imposing a sentence under this section may consider:

1557 (i) the sentencing guidelines developed in accordance with Section [63M-7-404](#);

1558 (ii) the defendant's history;

1559 (iii) the facts of the case;

1560 (iv) aggravating and mitigating factors; or

1561 (v) any other relevant fact.

1562 (b) The judge may not impose a lesser sentence than would be required for a conviction
1563 based on the defendant's history under Section [41-6a-505](#).

1564 (c) The standards for chemical breath analysis as provided by Section [41-6a-515](#) and
1565 the provisions for the admissibility of chemical test results as provided by Section [41-6a-516](#)
1566 apply to determination and proof of blood alcohol content under this section.

1567 (d) A calculation of blood or breath alcohol concentration under this section shall be
1568 made in accordance with Subsection [~~[41-6a-502\(2\)](#)~~] [41-6a-502\(3\)](#).

1569 (e) Except as provided in Subsection (4), the fact that an actor charged with violating
1570 this section is or has been legally entitled to use alcohol or a drug is not a defense.

1571 (f) Evidence of a defendant's blood or breath alcohol content or drug content is
1572 admissible except when prohibited by the Utah Rules of Evidence, the United States
1573 Constitution, or the Utah Constitution.

1574 (g) In accordance with Subsection [77-2a-3\(8\)](#), a guilty or no contest plea to an offense
1575 described in this section may not be held in abeyance.

1576 Section 20. Section 77-2a-3 is amended to read:

1577 **77-2a-3. Manner of entry of plea -- Powers of court.**

1578 (1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be
1579 done in full compliance with the Utah Rules of Criminal Procedure, Rule 11.

1580 (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance
1581 agreement may be entered into without a personal appearance before a magistrate.

1582 (2) A plea in abeyance agreement may provide that the court may, upon finding that the
1583 defendant has successfully completed the terms of the agreement:

1584 (a) reduce the degree of the offense and enter judgment of conviction and impose
1585 sentence for a lower degree of offense; or

1586 (b) allow withdrawal of defendant's plea and order the dismissal of the case.

1587 (3) (a) Upon finding that a defendant has successfully completed the terms of a plea in
1588 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as
1589 provided in the plea in abeyance agreement or as agreed to by all parties.

1590 (b) Upon sentencing a defendant for any lesser offense in accordance with a plea in
1591 abeyance agreement, the court may not invoke Section 76-3-402 to further reduce the degree of
1592 the offense.

1593 (4) The court may require the Department of Corrections to assist in the administration
1594 of the plea in abeyance agreement as if the defendant were on probation to the court under
1595 Section 77-18-105.

1596 (5) The terms of a plea in abeyance agreement may include:

1597 (a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a
1598 surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in
1599 the same manner as if paid as a fine for a criminal conviction under Section 78A-5-110 and a
1600 surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and
1601 which may not exceed in amount the maximum fine and surcharge which could have been
1602 imposed upon conviction and sentencing for the same offense;

1603 (b) an order that the defendant pay the costs of any remedial or rehabilitative program
1604 required by the terms of the agreement; and

1605 (c) an order that the defendant comply with any other conditions that could have been
1606 imposed as conditions of probation upon conviction and sentencing for the same offense.

1607 (6) (a) The terms of a plea in abeyance shall include an order for a specific amount of
1608 restitution that the defendant will pay, as agreed to by the defendant and the prosecuting
1609 attorney, unless the prosecuting attorney certifies that:

1610 (i) the prosecuting attorney has consulted with all victims, including the Utah Office
1611 for Victims of Crime; and

1612 (ii) the defendant does not owe any restitution.

1613 (b) The court shall collect, receive, process, and distribute payments for restitution to
1614 the victim, unless otherwise provided by law or by the plea in abeyance agreement.

1615 (c) If the defendant does not successfully complete the terms of the plea in abeyance,
1616 the court shall enter an order for restitution, in accordance with [~~Title 77, Chapter 38b, Crime~~
1617 ~~Victims Restitution Act~~] Chapter 38b, Crime Victims Restitution Act, upon entering a sentence
1618 for the defendant.

1619 (7) (a) A court may not hold a plea in abeyance without the consent of both the
1620 prosecuting attorney and the defendant.

1621 (b) A decision by a prosecuting attorney not to agree to a plea in abeyance is final.

1622 (8) No plea may be held in abeyance in any case involving:

1623 (a) a sexual offense against a victim who is under 14 years old; or

1624 (b) a driving under the influence violation under Section [41-6a-502](#), [41-6a-502.5](#),
1625 [41-6a-517](#), [41-6a-520](#), [41-6a-520.1](#), [41-6a-521.1](#), [76-5-102.1](#), or [76-5-207](#).

1626 Section 21. **Repealer.**

1627 This bill repeals:

1628 Section [41-6a-503](#), **Penalties for driving under the influence violations.**