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~~text~~ shows text that was in HB0395 but was deleted in HB0395S01.

text shows text that was not in HB0395 but was inserted into HB0395S01.

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Representative Steve Eliason proposes the following substitute bill:

DUI OFFENSE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: {}Steve Eliason

Senate Sponsor: { _____ } Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions related to driving under the influence, including penalties, mandatory sentencing, and pretrial detention.

Highlighted Provisions:

This bill:

- ▶ provides that an actor is guilty of a class A misdemeanor when the actor commits driving under the influence while also operating a vehicle in the opposite direction of traffic on a one-way highway with more than one lane of traffic;
- ▶ reduces the blood alcohol concentration allowed for an individual to plea down to impaired driving;
- ▶ provides mandatory minimum sentences for certain individuals with prior convictions for driving under the influence who violate ignition interlock

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requirements;

- ▶ clarifies that an ignition interlock restriction period begins on the date of installation of the ignition interlock system;
- ▶ clarifies that the prohibition on operating a motor vehicle without an ignition interlock system installed on the vehicle begins on the date of conviction, not the date of installation of the ignition interlock system;
- ▶ amends penalties for subsequent offenses related to refusal of a chemical test or negligent operation of a vehicle that results in injury;
- ▶ amends sentencing requirements for certain offenses of negligent operation of a vehicle that results in injury when there is evidence that the individual was also driving under the influence;
- ▶ amends sentencing requirements for an offense of negligent operation of a vehicle that results in death;
- ▶ amends provisions related to pretrial detention of an individual arrested for driving under the influence with another case pending or while on probation for a previous offense of driving under the influence;
- ▶ requires pretrial detention or electronic monitoring for an individual that is arrested for driving under the influence while already on probation for or while another case is pending for driving under the influence; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

41-6a-502, as last amended by Laws of Utah 2023, Chapter 415

41-6a-502.5, as last amended by Laws of Utah 2023, Chapter 328

41-6a-518.2, as last amended by Laws of Utah 2023, Chapters 384, 415

41-6a-520.1, as enacted by Laws of Utah 2023, Chapter 415

53-3-1007, as last amended by Laws of Utah 2023, Chapter 384

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76-5-102.1, as last amended by Laws of Utah 2023, Chapters 111, 415

76-5-207, as last amended by Laws of Utah 2023, Chapter 415

77-20-201, as last amended by Laws of Utah 2023, Chapter 408

77-40a-303, as last amended by Laws of Utah 2023, Chapter 265

ENACTS:

76-5-102.10, Utah Code Annotated 1953

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

Section 1. Section **41-6a-502** is amended to read:

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

(1) An actor commits driving under the influence if the actor operates or is in actual physical control of a vehicle within this state if the actor:

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

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

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

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

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

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

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

(iii) ~~[the actor]~~ at the time of the offense, also violated:

(A) Section 41-6a-712 or 41-6a-714 [at the time of the offense]; or

(B) Section 41-6a-709, if the violation occurs on a one-way highway, other than a roundabout, that has more than one lane of traffic; or

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

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

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

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

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

(A) the current conviction; or

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

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

(A) a felony conviction; or

(B) any conviction described in Subsection (2)(c)(ii)(A) for which judgment of conviction is reduced under Section 76-3-402.

~~[(ii) the current conviction is at any time after a conviction of:]~~

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

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

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

(3) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

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

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

(6) An offense described in this section is a strict liability offense.

(7) A guilty or no contest plea to an offense described in this section may not be held in abeyance.

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

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

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

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

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

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

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

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

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

(ii) If the defendant fails to appear before the court and establish successful completion of the court ordered probation requirements under Subsection (1)(a), the court shall enter an amended conviction of Section 41-6a-502.

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

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

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

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

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

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

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

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

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

- (i) a CDL license holder; or
- (ii) a violation that occurred in a commercial motor vehicle.

(8) The provisions of this section are not available:

(a) to a person who has a prior conviction as that term is defined in Subsection 41-6a-501(2); or

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

- (i) had a blood or breath alcohol level of [~~.16~~].11 or higher;
- (ii) had a blood or breath alcohol level of .05 or higher in addition to any measurable

controlled substance; or

(iii) had a combination of two or more controlled substances in the person's body that were not:

(A) prescribed by a licensed physician; or

(B) recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

Section 3. Section **41-6a-518.2** is amended to read:

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

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(1) As used in this section:

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

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

(ii) is certified by the Commissioner of Public Safety in accordance with Subsection 41-6a-518(8).

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

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

~~(B) ~~{}~~ within the last 18 months ~~{}~~ has been convicted of a violation under Section 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1;~~

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

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

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

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

~~(F) ~~{}~~ ~~(E)~~ ~~{}~~ within the last three years ~~{}~~ has been convicted of a violation of Section 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1 and was under 21 years old at the time the offense was committed;~~

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

~~(H) ~~{}~~ ~~(G)~~ ~~{}~~ within the last 10 years ~~{}~~ has been convicted of a violation of Section 76-5-207 ~~{}~~ for an offense that occurred after May 1, 2006.] ~~{, or~~~~

~~(I)~~

(i) "Interlock restricted driver" means a person who has been ordered by a court or the Board of Pardons and Parole as a condition of probation or parole not to operate a motor vehicle without an ignition interlock system.

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(ii) "Interlock restricted driver" includes, for the time periods described in Subsection (2), a person who:

(A) has been convicted of a violation under Section 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1;

(B) has been convicted of an offense which would be a conviction as defined under Section 41-6a-501, and that offense is committed within 10 years from the date that one or more prior offenses was committed if the prior offense resulted in a conviction as defined in Section 41-6a-501;

(C) has been convicted of a violation of this section;

(D) has been convicted of a violation of Section 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1 and was under 21 years old at the time the offense was committed;

(E) has been convicted of a felony violation of Section 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1;

(F) has been convicted of a violation of Section 76-5-207; or

(G) has had the persons driving privilege revoked through an administrative action for refusal to submit to a chemical test under Section 41-6a-520.

~~[(ii)]~~ (iii) "Interlock restricted driver" does not include a person:

(A) whose current conviction described in Subsection ~~[(1)(b)(i)(C)(F)]~~ (1)(b)(ii)(B) is a conviction under Section 41-6a-502 that does not involve alcohol or a conviction under Section 41-6a-517 and whose prior convictions described in Subsection ~~[(1)(b)(i)(C)(F)]~~ (1)(b)(ii)(B) are all convictions under Section 41-6a-502 that did not involve alcohol or convictions under Section 41-6a-517;

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

(C) whose conviction described in Subsection ~~[(1)(b)(i)(B), (C), or (F)]~~ (1)(b)(ii)(A), (B), or (D) is a conviction under Section 41-6a-502 that does not involve alcohol and the ignition interlock restriction is removed as described in Subsection ~~[(7)]~~ (8).

(2) (a) ~~{An}~~ The ignition interlock restriction period for an ignition interlock restricted driver under Subsection (1)(b)(ii) begins on ~~{the}~~:

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- (i) ~~{ date of conviction }~~ for a violation described in ~~{ Subsection }~~ Subsections (1)(b)(ii)(A) through ~~({G} F)~~, the date of conviction; or
- (ii) ~~{ effective date of the revocation }~~ for a person described in Subsection (1)(b)(~~{H} ii~~)(G), the effective date of the revocation.
- (b) The ignition interlock restriction period for an ignition interlock restricted driver under Subsection (1)(b)(ii) ends:
- (i) for a violation described in Subsection (1)(b)(ii)(A), 18 months from the day the ignition interlock restricted driver:
- (A) provides proof of installation of the ignition interlock system; and
(B) reinstates their driving privilege;
- (ii) for a violation described in Subsections (1)(b)(ii)(B) through (D) and Subsection (1)(b)(ii)(G), two years from the date the ignition interlock restricted driver:
- (A) provides proof of installation of the ignition interlock system; and
(B) reinstates their driving privilege;
- (iii) for a violation described in Subsection (1)(b)(~~{B}~~);
~~(ii) { } (E), three years from the date the ignition interlock restricted driver:~~
- (A) provides proof of installation of the ignition interlock system; and
(B) reinstates their driving privilege; and
- (iv) for a violation described in ~~{ Subsections }~~ Subsection (1)(b)(~~{C}~~ through (E) and Subsection (1)(b)(H);
- ~~(iii) ii) { six } (F), four years from the date the ignition interlock restricted driver:~~
- (A) provides proof of installation of the ignition interlock system { for a violation described in Subsection (1)(b)(F) }; and
- ~~(iv) 10 years from the date the ignition interlock restricted driver provides proof of installation of the ignition interlock system for a violation described in Subsection (1)(b)(G);~~
- ~~(c) If the ignition interlock restricted driver removes the } B) reinstates their driving privilege.~~
- (c) If an ignition interlock system is removed from the vehicle before the restriction period under Subsection (2)(b) has ended, the ignition interlock restriction period is extended by the number of days the ignition interlock system was removed from the persons vehicle.
- [~~(2)~~] (3) The division shall post the ignition interlock restriction on a person's

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electronic record that is available to law enforcement.

~~[(3)]~~ (4) For purposes of this section, a plea of guilty or no contest to a violation of Section 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

~~[(4)]~~ (5) An interlock restricted driver who operates or is in actual physical control of a vehicle in the state without an ignition interlock system is guilty of a class B misdemeanor.

~~[(5)]~~ (6) It is an affirmative defense to a charge of a violation of Subsection ~~[(4)]~~ (5) if:

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

(b) the interlock restricted driver had given written notice to the employer of the interlock restricted driver's interlock restricted status prior to the operation or actual physical control under Subsection ~~[(5)(a)]~~ (6)(a);

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

(d) the operation or actual physical control described in Subsection ~~[(5)(a)]~~ (6)(a) was in the scope of the interlock restricted driver's employment.

~~[(6)]~~ (7) The affirmative defense described in Subsection ~~[(5)]~~ (6) does not apply to:

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

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

~~[(7)]~~ (8) (a) An individual with an ignition interlock restriction may petition the division for removal of the restriction if the individual's offense did not involve alcohol.

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

~~[(8)]~~ (9) (a) (i) An individual with an ignition interlock restriction may petition the division for removal of the restriction if the individual has a medical condition that prohibits the individual from providing a deep lung breath sample.

(ii) In support of a petition under Subsection ~~[(8)(a)(i)]~~ (9)(a)(i), the individual shall

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provide documentation from a physician that describes the individual's medical condition and whether the individual's medical condition would prohibit the individual from being able to provide a deep breath lung sample.

(b) If the division is able to establish that an individual is unable to provide a deep breath lung sample as a result of a medical condition, the division may remove the ignition interlock restriction.

~~{ (10) (a) As part of any sentence that would be a first conviction of this section, the court shall impose a jail sentence of not less than two days.~~

~~_____ (b) If an individual has a prior conviction under this section that is within 10 years of the current conviction, the court shall impose as part of any sentence a jail sentence of:~~

~~_____ (i) not less than 10 days; or~~

~~_____ (ii) not less than five days, in addition to home confinement of not fewer than 30 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506.~~

~~_____ (c) If an individual has two or more prior convictions of this section that are within 10 years of the current conviction, the court shall impose as part of any sentence a jail sentence of not less than 30 days, in addition to home confinement of not fewer than 60 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506.~~

‡ Section 4. Section **41-6a-520.1** is amended to read:

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

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

(a) a peace officer issues the warning required in Subsection 41-6a-520(2)(a);

(b) a court issues a warrant to draw and test the blood; and

(c) after Subsections (1)(a) and (b), the actor refuses to submit to a test of the actor's blood.

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

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

(i) has a passenger younger than 16 years old in the vehicle at the time the officer had grounds to believe the actor was driving under the influence;

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(ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle at the time the officer had grounds to believe the actor was driving under the influence;

(iii) also violated Section 41-6a-712 or 41-6a-714 at the time of the offense; or

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

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

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

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

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

(A) the current conviction; or

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

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

(A) a felony conviction; or

(B) any conviction described in Subsection (2)(c)(ii)(A) for which judgment of conviction is reduced under Section 76-3-402.

~~[(ii) the current conviction is at any time after a conviction of:]~~

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

~~[(B) a felony violation of this section, Section 76-5-102.1, 41-6a-502, or a statute previously in effect in this state that would constitute a violation of this section; or]~~

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

(3) As part of any sentence for a conviction of violating this section, the court shall impose the same sentencing as outlined for driving under the influence violations in Section 41-6a-505, based on whether this is a first, second, or subsequent conviction, with the following modifications:

(a) any jail sentence shall be 24 consecutive hours more than is required under Section 41-6a-505;

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

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

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

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

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

(4) (a) The offense of refusing a chemical test under this section does not merge with any violation of Section 32B-4-409, 41-6a-502, 41-6a-517, or 41-6a-530.

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

(5) An actor is guilty of a separate offense under Subsection (1) for each passenger in the vehicle that is younger than 16 years old at the time the officer had grounds to believe the actor was driving under the influence.

Section 5. Section **53-3-1007** is amended to read:

53-3-1007. Ignition interlock system provider -- Notification to the division upon installation or removal of an ignition interlock system -- Monitoring and reporting requirements -- Penalties.

(1) An ignition interlock system provider who installs an ignition interlock system on an individual's vehicle shall:

(a) provide proof of installation to the individual; and

(b) electronically notify the division of installation of an ignition interlock system on the individual's vehicle.

(2) An ignition interlock system provider shall electronically notify the division if an individual has:

(a) removed an ignition interlock system from the individual's vehicle;

(b) attempted to start the motor vehicle with a measurable breath alcohol concentration, and the attempt to start the motor vehicle was prevented by the ignition interlock system, including the date and time of each attempt; or

(c) failed to report to the ignition interlock provider for the purpose of monitoring the device every 60 days, or more frequently if ordered by the court as described in Subsection 41-6a-518(5)(a).

(3) If an individual is an interlock restricted driver and the individual removes an ignition interlock system as described in Subsection (2)(a), the division shall:

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(a) suspend the individual's driving privilege for the duration of the restriction period as defined in Section 41-6a-518.2; and

(b) notify the individual of the suspension period in place and the requirements for reinstatement of the driving privilege with respect to the ignition interlock restriction suspension.

(4) The division shall clear a suspension described in Subsection (3) upon:

(a) receipt of payment of the fee or fees required under Section 53-3-105; and

(b) (i) receipt of electronic notification from an ignition interlock system provider showing proof of the installation of an ignition interlock system on the individual's vehicle or the vehicle the individual will be operating;

(ii) if the individual does not own a vehicle or will not be operating a vehicle owned by another individual:

(A) electronic verification that the individual does not have a vehicle registered in the individual's name in the state; and

(B) receipt of employer verification, as defined in Subsection 41-6a-518(1); or

(iii) if the individual is not a resident of Utah, electronic verification that the individual is licensed in the individual's state of residence or is in the process of obtaining a license in the individual's state of residence.

(5) If Subsection (4)(b)(ii) applies, the division shall every six months:

(a) electronically verify the individual does not have a vehicle registered in the individual's name in the state; and

(b) require the individual to provide updated documentation described in Subsection (4)(b)(ii).

(6) If the individual described in Subsection (5) does not provide the required documentation described in Subsection (4)(b)(ii), the division shall suspend the individual's driving privilege until:

(a) the division receives payment of the fee or fees required under Section 53-3-105; and

(b) (i) the division:

(A) receives electronic notification from an ignition interlock system provider showing proof of the installation of an ignition interlock system on the individual's vehicle or the

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vehicle the individual will be operating; or

(B) if the individual does not own a vehicle or will not be operating a vehicle owned by another individual, receives electronic verification that the individual does not have a vehicle registered in the individual's name in the state, and receives employer verification, as defined in Subsection 41-6a-518(1); or

(ii) if the individual is not a resident of Utah, electronic verification that the individual is licensed in the individual's state of residence or is in the process of obtaining a license in the individual's state of residence.

(7) By following the procedures in Title 63G, Chapter 4, Administrative Procedures Act, the division shall suspend the license of any individual without receiving a record of the individual's conviction of crime seven days after receiving electronic notification from an ignition interlock system provider that an individual has removed an ignition interlock system from the individual's vehicle or a vehicle owned by another individual and operated by the individual if the individual is an interlock restricted driver until:

(a) the division receives payment of the fee or fees specified in Section 53-3-105; and

(b) (i) (A) the division receives electronic notification from an ignition interlock system provider showing new proof of the installation of an ignition interlock system on the individual's vehicle or the vehicle the individual will be operating; or

(B) if the individual does not own a vehicle or will not be operating a vehicle owned by another individual, the division receives electronic verification that the individual does not have a vehicle registered in the individual's name in the state, and receives employer verification, as defined in Subsection 41-6a-518(1);

(ii) if the individual is not a resident of Utah, the division receives electronic verification that the individual is licensed in the individual's state of residence or is in the process of obtaining a license in the individual's state of residence; or

(iii) the individual's interlock restricted period has expired.

(8) (a) Upon receipt of a notice described in Subsection (2)(b) or (2)(c), the division shall extend the individual's ignition interlock restriction period by 60 days.

(b) The division shall notify the individual of the modified ignition interlock restriction period described in Subsection (8)(a).

(9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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division shall make rules establishing:

- (a) procedures for certification and regulation of ignition interlock system providers;
- (b) acceptable documentation for proof of the installation of an ignition interlock device;
- (c) procedures for an ignition interlock system provider to electronically notify the division;
- (d) procedures for an ignition interlock system provider to provide monitoring of an ignition interlock system and reporting the results of monitoring;
- (e) procedures for the removal of an ignition interlock restriction if the individual is unable to provide a deep lung breath sample as a result of a medical condition and is unable to properly use an ignition interlock system as described in Subsection [~~41-6a-518.2(8)~~ 41-6a-518.2(9)]; and
- (f) policies and procedures for the administration of the ignition interlock system program created under this section.

Section 6. Section **76-5-102.1** is amended to read:

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

- (1) (a) As used in this section:
 - (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.
 - (ii) "Drug" means the same as that term is defined in Section 76-5-207.
 - (iii) "Negligent" or "negligence" means the same as that term is defined in Section 76-5-207.
 - (iv) "Vehicle" means the same as that term is defined in Section 41-6a-501.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits negligently operating a vehicle resulting in injury if the actor:
 - (a) (i) operates a vehicle in a negligent manner causing bodily injury to another; and
 - (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;
 - (B) is under the influence of alcohol, a drug, or the combined influence of alcohol and a drug to a degree that renders the actor incapable of safely operating a vehicle; or
 - (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of

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operation; or

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

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

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

~~[(a) (i) a class A misdemeanor; or]~~

~~[(ii) a third degree felony if the bodily injury is serious bodily injury; and]~~

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

(ii) a third degree felony if the actor has two or more driving under the influence related convictions under Subsection 41-6a-501(2)(a), each of which is within 10 years of:

(A) the current conviction; or

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

(iii) a third degree felony, if the current conviction is at any time after the conviction

of:

(A) a felony conviction; or

(B) any conviction described in Subsection (3)(a)(iii)(A) for which judgment of conviction is reduced under Section 76-3-402; or

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

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

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

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

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

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

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

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

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

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

(ii) the defendant's history;

(iii) the facts of the case;

(iv) aggravating and mitigating factors; or

(v) any other relevant fact.

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

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

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

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

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

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

Section 7. Section **76-5-102.10** is enacted to read:

76-5-102.10. Sentencing requirements for negligently operating a vehicle resulting in injury.

(1) As used in this section:

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

(b) "Educational series" means the same as that term is defined in Section 41-6a-501.

(c) "Screening" means the same as that term is defined in Section 41-6a-501.

(2) As part of any sentence for a conviction of Subsection 76-5-102.1(3)(a)(ii) that would be a first conviction of any driving under the influence related offense found under Subsection 41-6a-501(2)(a) where there is admissible evidence that the individual had a blood

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or breath alcohol level of .16 or higher, had a blood or breath alcohol level of .05 or higher in addition to any measurable controlled substance, or had a combination of two or more controlled substances in the individual's body that were not recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or prescribed:

(a) the court shall:

(i) impose a jail sentence of not less than ten days;

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

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

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

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

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

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

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

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

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

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

(b) the court may:

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

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

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(iii) order a combination of Subsections (2)(b)(i) and (ii).

(3) As part of any sentence for any first conviction of Subsection 76-5-102.1(3)(a)(i) that would be a first conviction of any driving under the influence related offense found under Subsection 41-6a-501(2)(a) not described in Subsection (2):

(a) the court shall:

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

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

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

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

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

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

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

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

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

(b) the court may:

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

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

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

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

(4) If an individual has a prior conviction as defined in Section 41-6a-501 that is within 10 years of the current conviction under Subsection 76-5-102.1(3)(a)(ii) or the commission of

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the offense upon which the current conviction is based and where there is admissible evidence that the individual had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol level of .05 or higher in addition to any measurable controlled substance, or had a combination of two or more controlled substances in the individual's body that were not recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or prescribed:

(a) the court shall:

(i) impose a jail sentence of not less than 40 days;

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

(iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (4)(a)(ii);

(iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (4)(b);

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

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

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

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

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

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

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

(b) the court may:

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

(ii) order the individual to participate in a 24/7 sobriety program as defined in Section

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41-6a-515.5 if the individual is 21 years old or older; or

(iii) order a combination of Subsections (4)(b)(i) and (ii).

(5) If an individual has a prior conviction as defined in Section 41-6a-501 that is within 10 years of the current conviction under Subsection 76-5-102.1(3)(a)(ii) or the commission of the offense upon which the current conviction is based and that does not qualify under Subsection (4):

(a) the court shall:

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

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

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

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

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

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

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

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

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

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

(b) the court may:

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

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

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

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(6) If the court suspends the execution of a prison sentence and places the defendant on probation as part of any sentence for a conviction of Subsection 76-5-102.1(3)(a)(ii) where there is admissible evidence that the individual had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol level of .05 or higher in addition to any measurable controlled substance, or had a combination of two or more controlled substances in the individual's body that were not recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or prescribed:

(a) the court shall:

(i) impose a jail sentence of not less than 240 days;

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

(iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (6)(a)(ii);

(iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (6)(b);

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

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

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

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

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

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

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

(b) the court may:

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

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

(iii) order a combination of Subsections (6)(b)(i) and (ii).

(7) If the court suspends the execution of a prison sentence and places the defendant on probation as part of any sentence for a conviction of Subsection 76-5-102.1(3)(a)(ii) not described in Subsection (6):

(a) the court shall:

(i) impose a jail sentence of not less than 120 days;

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

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

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

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

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

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

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

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

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

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

(b) the court may:

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

(ii) order the individual to participate in a 24/7 sobriety program as defined in Section

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41-6a-515.5 if the individual is 21 years old or older; or

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

(8) If the court suspends the execution of a prison sentence and places the defendant on probation as part of any sentence for a conviction of Subsection 76-5-102.1(3)(a)(ii) that would be a first conviction of any DUI related offense found under Subsection 41-6a-501(2)(a) where there is admissible evidence that the individual had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol level of .05 or higher in addition to any measurable controlled substance, or had a combination of two or more controlled substances in the individual's body that were not recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or prescribed:

(a) the court shall:

(i) impose a jail sentence of not less than 180 days;

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

(iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (8)(a)(ii);

(iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (8)(b);

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

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

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

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

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

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

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

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(b) the court may:

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

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

(iii) order a combination of Subsections (8)(b)(i) and (ii).

(9) If the court suspends the execution of a prison sentence and places the defendant on probation as part of any sentence for a conviction of Subsection 76-5-102.1(3)(a)(ii) that would be a first conviction of any DUI related offense found under Subsection 41-6a-501(2)(a) and not described in Subsection (8):

(a) the court shall:

(i) impose a jail sentence of not less than 90 days;

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

(iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (9)(a)(ii);

(iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (9)(b);

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

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

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

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

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

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

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

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(b) the court may:

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

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

(iii) order a combination of Subsections (9)(b)(i) and (ii).

(10) If the court suspends the execution of a prison sentence and places the defendant on probation as part of any sentence for a conviction where an individual has a prior conviction as defined in Section 41-6a-501 that is within 10 years of the current conviction under Subsection 76-5-102.1(3)(a)(ii) or the commission of the offense upon which the current conviction is based and where there is admissible evidence that the individual had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol level of .05 or higher in addition to any measurable controlled substance, or had a combination of two or more controlled substances in the individual's body that were not recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or prescribed:

(a) the court shall:

(i) impose a jail sentence of not less than 360 days;

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

(iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (10)(a)(ii);

(iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (10)(b);

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

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

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

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

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

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

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

(b) the court may:

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

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

(iii) order a combination of Subsections (10)(b)(i) and (ii).

(11) If the court suspends the execution of a prison sentence and places the defendant on probation as part of any sentence for a conviction where an individual has a prior conviction as defined in Section 41-6a-501 that is within 10 years of the current conviction under Subsection 76-5-102.1(3)(a)(ii) or the commission of the offense upon which the current conviction is based and that does not qualify under Subsection (10):

(a) the court shall:

(i) impose a jail sentence of not less than 270 days;

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

(iii) order the individual to participate in an assessment, if it is found appropriate by a screening under Subsection (11)(a)(ii);

(iv) order the individual to participate in an educational series if the court does not order substance abuse treatment as described under Subsection (11)(b);

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

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

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

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

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

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72-9-603; or

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

(b) the court may:

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

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

(iii) order a combination of Subsections (11)(b)(i) and (ii).

(12) If an individual has two or more prior convictions as defined in Section 41-6a-501 that is within 10 years of the current conviction under Subsection 76-5-102.1(3)(a)(ii) or the commission of the offense upon which the current conviction is based and that does not qualify under Subsection (10) the court shall impose, and may not suspend, a prison sentence.

Section 8. Section **76-5-207** is amended to read:

76-5-207. Negligently operating a vehicle resulting in death -- Penalties --

Evidence.

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

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

(ii) "Criminally negligent" means the same as that term is described in Subsection 76-2-103(4).

(iii) "Drug" means:

(A) a controlled substance;

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

(C) a substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of an individual to safely operate a vehicle.

(iv) "Negligent" or "negligence" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

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

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

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

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(a) (i) operates a vehicle in a negligent or criminally negligent manner causing the death of another individual;

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

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

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

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

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

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

(a) a second degree felony; and

(b) a separate offense for each victim suffering death as a result of the actor's violation of this section, regardless of whether the deaths arise from the same episode of driving.

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

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

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

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

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

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

(5) (a) A judge imposing a sentence under this section [~~may consider:~~] shall impose and may not suspend a prison sentence.

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

~~[(ii) the defendant's history;]~~

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~~[(iii) the facts of the case;]~~

~~[(iv) aggravating and mitigating factors; or]~~

~~[(v) any other relevant fact.]~~

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

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

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

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

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

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

Section 9. Section **77-20-201** is amended to read:

77-20-201. Right to bail -- Capital felony.

(1) An individual charged with, or arrested for, a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with:

(a) a capital felony when there is substantial evidence to support the charge;

(b) a felony committed while on parole or on probation for a felony conviction, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the current felony charge;

(c) a felony when there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that:

(i) the individual would constitute a substantial danger to any other individual or to the community after considering available conditions of release that the court may impose if the individual is released on bail; or

(ii) the individual is likely to flee the jurisdiction of the court if the individual is

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released on bail;

(d) a felony when there is substantial evidence to support the charge and the court finds, by clear and convincing evidence, that the individual violated a material condition of release while previously on bail;

(e) a domestic violence offense if:

(i) there is substantial evidence to support the charge; and

(ii) the court finds, by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence after considering available conditions of release that the court may impose if the individual is released on bail;

(f) the offense of driving under the influence or driving with a measurable controlled substance in the body if:

(i) the offense results in death or serious bodily injury to an individual;

(ii) there is substantial evidence to support the charge; and

(iii) the court finds, by clear and convincing evidence, that the individual would constitute a substantial danger to the community after considering available conditions of release that the court may impose if the individual is released on bail; ~~or~~

(g) a felony violation of Section 76-9-101 if:

(i) there is substantial evidence to support the charge; and

(ii) the court finds, by clear and convincing evidence, that the individual is not likely to appear for a subsequent court appearance~~[-];~~ or

(h) except as provided in Subsection (4), the offense of driving under the influence or driving with a measurable controlled substance in the body:

(i) if committed while on parole or on probation for a driving under the influence or driving with a measurable controlled substance in the body conviction; or

(ii) while the individual is out of custody awaiting trial on a previous driving under the influence or driving with a measurable controlled substance in the body charge, when the court finds there is substantial evidence to support the current charge.

(2) Notwithstanding any other provision of this section, there is a rebuttable presumption that an individual is a substantial danger to the community under Subsection (1)(f)(iii):

(a) as long as the individual has a blood or breath alcohol concentration of .05 grams or

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greater if the individual is arrested for, or charged with, the offense of driving under the influence and the offense resulted in death or serious bodily injury to an individual; or

(b) if the individual has a measurable amount of controlled substance in the individual's body, the individual is arrested for, or charged with, the offense of driving with a measurable controlled substance in the body and the offense resulted in death or serious bodily injury to an individual.

(3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section 76-5-202, aggravated murder, is a capital felony unless:

(a) the prosecuting attorney files a notice of intent to not seek the death penalty; or

(b) the time for filing a notice to seek the death penalty has expired and the prosecuting attorney has not filed a notice to seek the death penalty.

(4) For purposes of Subsection (1)(h), there is a rebuttable presumption that an individual would not constitute a substantial danger to any other person or the community if:

(a) the court orders the person to participate in an inpatient drug and alcohol treatment program; or

(b) the court orders the person to participate in home confinement through the use of electronic monitoring as described in Section 41-6a-506.

Section 10. Section **77-40a-303** is amended to read:

77-40a-303. Requirements for a certificate of eligibility to expunge records of a conviction.

(1) Except as otherwise provided by this section, a petitioner is eligible to receive a certificate of eligibility from the bureau to expunge the records of a conviction if:

(a) the petitioner has paid in full all fines and interest ordered by the court related to the conviction for which expungement is sought;

(b) the petitioner has paid in full all restitution ordered by the court under Section 77-38b-205; and

(c) the following time periods have passed after the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for the conviction that the petitioner seeks to expunge:

(i) 10 years for the conviction of a misdemeanor under Subsection 41-6a-501(2);

(ii) 10 years for the conviction of a felony for operating a motor vehicle with any

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

- (iii) seven years for the conviction of a felony;
- (iv) five years for the conviction of a drug possession offense that is a felony;
- (v) five years for the conviction of a class A misdemeanor;
- (vi) four years for the conviction of a class B misdemeanor; or
- (vii) three years for the conviction of a class C misdemeanor or infraction.

(2) A petitioner is not eligible to receive a certificate of eligibility from the bureau to expunge the records of a conviction under Subsection (1) if:

(a) except as provided in Subsection (3), the conviction for which expungement is sought is:

- (i) a capital felony;
- (ii) a first degree felony;
- (iii) a felony conviction of a violent felony as defined in Subsection

76-3-203.5(1)(c)(i);

(iv) (A) a felony conviction described in Subsection 41-6a-501(2); or

(B) any conviction described in Subsection (2)(a)(iv)(A) for which judgment of conviction is reduced under Section 76-3-402;

(v) an offense, or a combination of offenses, that would require the individual to register as a sex offender, as defined in Section 77-41-102; or

(vi) a registerable child abuse offense as defined in Subsection 77-43-102(2);

(b) there is a criminal proceeding for a misdemeanor or felony offense pending against the petitioner, unless the criminal proceeding is for a traffic offense;

(c) there is a plea in abeyance for a misdemeanor or felony offense pending against the petitioner, unless the plea in abeyance is for a traffic offense;

(d) the petitioner is currently incarcerated, on parole, or on probation, unless the petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory offense;

(e) the petitioner intentionally or knowingly provides false or misleading information on the application for a certificate of eligibility;

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(f) there is a criminal protective order or a criminal stalking injunction in effect for the case; or

(g) the bureau determines that the petitioner's criminal history makes the petitioner ineligible for a certificate of eligibility under Subsection (4) or (5).

(3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as defined in Section 76-3-209, if, at the time of the offense, a petitioner who committed the offense was at least 14 years old but under 18 years old, unless the petitioner was convicted by a district court as an adult in accordance with Title 80, Chapter 6, Part 5, Transfer to District Court.

(4) Subject to Subsections (6), (7), and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) two or more felony convictions other than for drug possession offenses, each of which is contained in a separate criminal episode;

(b) any combination of three or more convictions other than for drug possession offenses that include two class A misdemeanor convictions, each of which is contained in a separate criminal episode;

(c) any combination of four or more convictions other than for drug possession offenses that include three class B misdemeanor convictions, each of which is contained in a separate criminal episode; or

(d) five or more convictions other than for drug possession offenses of any degree whether misdemeanor or felony, each of which is contained in a separate criminal episode.

(5) Subject to Subsections (7) and (8), a petitioner is not eligible to receive a certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau determines that the petitioner's criminal history, including previously expunged convictions, contains any of the following:

(a) three or more felony convictions for drug possession offenses, each of which is contained in a separate criminal episode; or

(b) any combination of five or more convictions for drug possession offenses, each of which is contained in a separate criminal episode.

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(6) If the petitioner's criminal history contains convictions for both a drug possession offense and a non-drug possession offense arising from the same criminal episode, the bureau shall count that criminal episode as a conviction under Subsection (4) if any non-drug possession offense in that episode:

(a) is a felony or class A misdemeanor; or

(b) has the same or a longer waiting period under Subsection (1)(c) than any drug possession offense in that episode.

(7) Except as provided in Subsection (8), if at least 10 years have passed after the day on which the petitioner was convicted or released from incarceration, parole, or probation, whichever occurred last, for all convictions:

(a) each numerical eligibility limit under Subsections (4)(a) and (b) shall be increased by one; and

(b) each numerical eligibility limit under Subsections (4)(c) and (d) is not applicable if the highest level of convicted offense in the criminal episode is:

(i) a class B misdemeanor;

(ii) a class C misdemeanor;

(iii) a drug possession offense if none of the non-drug possession offenses in the criminal episode are a felony or a class A misdemeanor; or

(iv) an infraction.

(8) When determining whether a petitioner is eligible for a certificate of eligibility under Subsection (4), (5), or (7), the bureau may not consider a petitioner's pending case or prior conviction for:

(a) an infraction;

(b) a traffic offense;

(c) a minor regulatory offense; or

(d) a clean slate eligible case that was automatically expunged in accordance with Section 77-40a-201.

(9) If the petitioner received a pardon before May 14, 2013, from the Utah Board of Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes in accordance with Section 77-27-5.1.

Section 11. **Effective date.**

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This bill takes effect on ~~May~~ July 1, 2024.