

HB0395S03 compared with HB0395S02

~~text~~ shows text that was in HB0395S02 but was deleted in HB0395S03.

text shows text that was not in HB0395S02 but was inserted into HB0395S03.

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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, ~~text~~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;
- ▶ requires the Department of Public Safety to waive participation and testing fees entirely or in part for indigent individuals participating in the 24-7 sobriety

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program;

- ▶ requires an individual for whom the Department of Public Safety waived fees to reimburse the Department of Public Safety under certain circumstances;
- ▶ ~~{provides mandatory minimum}~~ amends provisions related to sentences for certain individuals with prior convictions for driving under the influence who violate ignition interlock requirements;
- ▶ allows an ignition interlock restricted driver to petition the Driver License Division for removal of the restriction in certain circumstances if certain conditions are met;
- ▶ 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;
- ▶ requires the Sentencing Commission to amend sentencing guidelines for certain offenses related to ignition interlock restricted drivers and of negligent operation of a vehicle that results in injury when there is evidence that the individual was also driving under the influence;
- ▶ 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:

This bill provides a special effective date.

Utah Code Sections Affected:

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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-505, as last amended by Laws of Utah 2023, Chapters 328, 415

41-6a-515.5, as last amended by Laws of Utah 2021, Chapter 83

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

63M-7-404, as last amended by Laws of Utah 2023, Chapter 111

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

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;

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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 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

(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

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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.

(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

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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.

(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) except as provided in Subsection (9), 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

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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.

(9) (a) The provisions of this section are available to an individual who was 21 years old or older at the time of offense and where there is admissible evidence that the individual had a blood or breath alcohol level between .11 and .15, if the court orders the individual to:

(i) install an ignition interlock system in accordance with Section 41-6a-518, for not less than ~~{18}~~three months; and

(ii) (A) wear an ankle attached continuous transdermal alcohol monitoring device or remote alcohol monitor not fewer than ~~{90}~~30 consecutive days; or

(B) participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 for a minimum of 30 days.

(b) If the defendant fails to successfully complete the court ordered requirements under Subsection (9)(a), the court shall enter an amended conviction of Section 41-6a-502.

(c) Failure to successfully complete requirements under Subsection (9)(b) means:

(i) failure to install an ignition interlock system in accordance with Section 41-6a-518;

(ii) removal of an ignition interlock system prior to the expiration of the required ~~{18-month}~~three-month period as described in Subsection (9)(a)(i);

(iii) detection of alcohol or tampering with the ignition interlock system during the three-month period described in Subsection (9)(a)(i);

(~~{iii}~~iv) detection of alcohol or tampering with the device during the ~~{90-day}~~30-day transdermal alcohol monitoring period described in Subsection (9)(a)(ii)(A); or

(~~{iv}~~v) failure to successfully complete the ~~{24-7-}~~24-7 sobriety program as described in Subsection (9)(a)(ii)(B).

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

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

(1) As part of any sentence for a first conviction of Section 41-6a-502 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

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

(B) impose a jail sentence of not less than two 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;

(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 (1)(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 (1)(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;

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(ii) order the individual to participate in a [~~24/7~~] 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 (1)(b)(i) and (ii).

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

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

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

(a) the court shall:

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

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

(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

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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 probation for the individual in accordance with Section 41-6a-507;

(iii) order the individual to participate in a [24/7] 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) (a) If an individual described in Subsection (3) is participating in a [24/7] 24-7 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed under Subsection (3)(a).

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

(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 Section 41-6a-502 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) (A) impose a jail sentence of not less than 20 days;

(B) impose a jail sentence of not less than 10 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; or

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

(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

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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) 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~~] 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).

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

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

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

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

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

(a) the court shall:

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

(B) impose a jail sentence of not less than 5 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;

(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) (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~~] 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 (7)(b)(i) and (ii).

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

- (i) five days of the jail sentence for a second offense; or
- (ii) 10 days of the jail sentence for a third or subsequent offense.

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

(9) Under Subsection 41-6a-502(2)(c), if the court suspends the execution of a prison sentence and places the defendant on probation 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 in addition to any measurable controlled substance, or had a combination of two or more controlled substances in the [~~person's~~] individual's body that were not recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research Medical Cannabis, or prescribed, the court shall impose:

- (a) a fine of not less than \$1,500;
- (b) a jail sentence of not less than 120 days;
- (c) home confinement of not fewer than 120 consecutive days through the use of electronic monitoring that includes a substance abuse testing instrument in accordance with Section 41-6a-506; and
- (d) supervised probation.

(10) (a) For Subsection (9) or Subsection 41-6a-502(2)(c)(i), the court:

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

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

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

(11) Under Subsection 41-6a-502(2)(c), if the court suspends the execution of a prison sentence and places the defendant on probation with a sentence not described in Subsection (9),

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the court shall impose:

- (a) a fine of not less than \$1,500;
- (b) a jail sentence of not less than 60 days;
- (c) 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; and

- (d) supervised probation.

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

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

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

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

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

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

(ii) the imposition of an ankle attached continuous transdermal alcohol monitoring device or remote alcohol monitor 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.

Section 4. Section **41-6a-515.5** is amended to read:

41-6a-515.5. Sobriety program for DUI.

- (1) As used in this section:

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(a) "24-7 sobriety program" means a 24 hours a day, seven days a week sobriety and drug monitoring program that:

- (i) requires an individual to abstain from alcohol or drugs for a period of time;
- (ii) requires an individual to submit to random drug testing; and
- (iii) requires the individual to be subject to testing to determine the presence of

alcohol:

(A) twice a day at a central location where timely sanctions may be applied;

(B) by continuous remote sensing or transdermal alcohol monitoring by means of an electronic monitoring device that allows timely sanctions to be applied; or

(C) by an alternate method that is approved by the National Highway Traffic Safety Administration.

(b) (i) "Testing" means a procedure for determining the presence and level of alcohol or a drug in an individual's breath or body fluid, including blood, urine, saliva, or perspiration.

(ii) "Testing" includes any combination of the use of:

(A) remote and in-person breath testing;

(B) drug patch testing;

(C) urinalysis testing;

(D) saliva testing;

(E) continuous remote sensing;

(F) transdermal alcohol monitoring; or

(G) alternate body fluids approved for testing by the commissioner of the department.

(2) The department may establish a 24-7 sobriety program with a law enforcement agency that is able to meet the 24-7 sobriety program qualifications and requirements under this section.

(3) (a) The 24-7 sobriety program shall include use of multiple testing methodologies for the presence of alcohol or drugs that:

(i) best facilitates the ability to apply timely sanctions for noncompliance;

(ii) is available at an affordable cost; and

(iii) provides for positive, behavioral reinforcement for program compliance.

(b) The commissioner shall consider the following factors to determine which testing methodologies are best suited for each participant:

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- (i) whether a device is available;
 - (ii) whether the participant is capable of paying the fees and costs associated with each testing methodology;
 - (iii) travel requirements based on each testing methodology and the participant's circumstances;
 - (iv) the substance or substances for which testing will be required; and
 - (v) other factors the commissioner considers relevant.
- (4) (a) The 24-7 sobriety program shall be supported by evidence of effectiveness and satisfy at least two of the following categories:
- (i) the program is included in the federal registry of evidence-based programs and practices;
 - (ii) the program has been reported in a peer-reviewed journal as having positive effects on the primary targeted outcome; or
 - (iii) the program has been documented as effective by informed experts and other sources.
- (b) If a law enforcement agency participates in a 24-7 sobriety program, the department shall assist in the creation and administration of the program in the manner provided in this section.
- (c) A 24-7 sobriety program shall have at least one testing location and two daily testing times approximately 12 hours apart.
- (d) [~~A person~~] An individual who is ordered by a judge to participate in the 24-7 sobriety program for a first conviction as defined in Subsection 41-6a-501(2) shall be required to participate in a 24-7 sobriety program for at least 30 days.
- (e) If [~~a person~~] an individual who is ordered by a judge to participate in the 24-7 sobriety program has a prior conviction as defined in Subsection 41-6a-501(2) that is within 10 years of the current conviction under Section 41-6a-502 or the commission of the offense upon which the current conviction is based, the [~~person~~] individual shall be required to participate in a 24-7 sobriety program for at least one year.
- (5) (a) If a law enforcement agency participates in a 24-7 sobriety program, the law enforcement agency may designate an entity to provide the testing services or to take any other action required or authorized to be provided by the law enforcement agency pursuant to this

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section, except that the law enforcement agency's designee may not determine whether an individual is required to participate in the 24-7 sobriety program.

(b) Subject to the requirement in Subsection (4)(c), the law enforcement agency shall establish the testing locations and times for the county.

(6) (a) The commissioner of the department shall establish a data management technology plan for data collection on 24-7 sobriety program participants.

(b) All required data related to participants in the 24-7 sobriety program shall be received into the data management technology plan.

(c) The data collected under this Subsection (6) is owned by the state.

(7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to implement this section.

(b) The rules under Subsection (7)(a) shall:

(i) provide for the nature and manner of testing and the procedures and apparatus to be used for testing;

(ii) establish reasonable participation and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, and deactivation of any testing device;

(iii) establish a process for determining indigency and waiving of a portion of the participation and testing fees for indigent individuals in accordance with Subsection (8);

~~[(iii)]~~ (iv) require and provide for the approval of a 24-7 sobriety program data management technology plan that shall be used by the department and participating law enforcement agencies to manage testing, data access, fees and fee payments, and any required reports; and

~~[(iv)]~~ (v) establish a model sanctioning schedule for program noncompliance.

(8) (a) The department may waive the department's portion of the participation and testing fees, entirely or in part, for individuals who meet the requirements for indigency provided in Section 78B-22-202.

(b) The department may not waive the portion of the participation and testing fees that are retained by a participating law enforcement agency or testing program site.

(c) The department may periodically adjust participation and testing fees to offset lost program revenue resulting from any fee waivers.

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(d) If an individual for whom the department waived fees under this Subsection (8) fails to successfully complete all of the requirements of the 24-7 sobriety program, a court may order the individual to pay the department for any waived fees.

Section 5. Section **41-6a-518.2** is amended to read:

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

(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) 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) 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]~~

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~~[(H) 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.]~~

(b) (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.

(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)(H)]~~ (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)(H)]~~ (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

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(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) The ignition interlock restriction period for an ignition interlock restricted driver under Subsection (1)(b)(ii) begins on:

(i) for a violation described in Subsections (1)(b)(ii)(A) through (F), the date of conviction; or

(ii) for a person described in Subsection (1)(b)(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)(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 Subsection (1)(b)(ii)(F), four 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.

(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.

(d) An ignition interlock restricted driver may petition the Driver License Division for

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removal of the ignition interlock restriction related to a first offense under Section 41-6a-502, and the Driver License Division may grant the petition, if:

(i) the ignition interlock restricted driver was 21 years old or older at the time of the offense;

(ii) at least three years have elapsed since the date of the conviction under Section 41-6a-502;

(iii) the ignition interlock restricted driver certifies to the division that the ignition interlock restricted driver has not operated a motor vehicle during the three-year period after the date of the conviction under Section 41-6a-502;

(iv) there is no evidence of a traffic or driving related violation on the ignition interlock restricted driver's driving record during the three-year period after the date of the conviction under Section 41-6a-502; and

(v) there is no evidence of a motor vehicle crash involving the interlock restricted driver where the interlock restricted driver was operating a motor vehicle during the three-year period after the date of the conviction under Section 41-6a-502.

~~[(2)]~~ (3) The division shall post the ignition interlock restriction on a person's 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

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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 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~~

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~~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 6. 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;

(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.

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~~[(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;

(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 7. 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.

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(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:

(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

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(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 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

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(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 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 8. Section **63M-7-404** is amended to read:

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63M-7-404. Purpose -- Duties.

- (1) The purpose of the commission is to develop guidelines and propose recommendations to the Legislature, the governor, and the Judicial Council regarding:
- (a) the sentencing and release of juvenile and adult offenders in order to:
 - (i) respond to public comment;
 - (ii) relate sentencing practices and correctional resources;
 - (iii) increase equity in criminal sentencing;
 - (iv) better define responsibility in criminal sentencing; and
 - (v) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority;
 - (b) the length of supervision of adult offenders on probation or parole in order to:
 - (i) increase equity in criminal supervision lengths;
 - (ii) respond to public comment;
 - (iii) relate the length of supervision to an offender's progress;
 - (iv) take into account an offender's risk of offending again;
 - (v) relate the length of supervision to the amount of time an offender has remained under supervision in the community; and
 - (vi) enhance the discretion of the sentencing judges while preserving the role of the Board of Pardons and Parole; and
 - (c) appropriate, evidence-based probation and parole supervision policies and services that assist individuals in successfully completing supervision and reduce incarceration rates from community supervision programs while ensuring public safety, including:
 - (i) treatment and intervention completion determinations based on individualized case action plans;
 - (ii) measured and consistent processes for addressing violations of conditions of supervision;
 - (iii) processes that include using positive reinforcement to recognize an individual's progress in supervision;
 - (iv) engaging with social services agencies and other stakeholders who provide services that meet offender needs; and
 - (v) identifying community violations that may not warrant revocation of probation or

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parole.

(2) (a) The commission shall modify the sentencing guidelines and supervision length guidelines for adult offenders to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism.

(b) The modifications under Subsection (2)(a) shall be for the purposes of protecting the public and ensuring efficient use of state funds.

(3) (a) The commission shall modify the criminal history score in the sentencing guidelines for adult offenders to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism.

(b) The modifications to the criminal history score under Subsection (3)(a) shall include factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again.

(4) (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on probation and:

- (i) who have violated one or more conditions of probation; and
- (ii) whose probation has been revoked by the court.

(b) For a situation described in Subsection (4)(a), the guidelines shall recommend that a court consider:

- (i) the seriousness of any violation of the condition of probation;
- (ii) the probationer's conduct while on probation; and
- (iii) the probationer's criminal history.

(5) (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on parole and:

- (i) who have violated a condition of parole; and
- (ii) whose parole has been revoked by the Board of Pardons and Parole.

(b) For a situation described in Subsection (5)(a), the guidelines shall recommend that the Board of Pardons and Parole consider:

- (i) the seriousness of any violation of the condition of parole;
- (ii) the individual's conduct while on parole; and
- (iii) the individual's criminal history.

(6) The commission shall establish graduated and evidence-based processes to

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facilitate the prompt and effective response to an individual's progress in or violation of the terms of probation or parole by the adult probation and parole section of the Department of Corrections, or other supervision services provider, to implement the recommendations of the State Commission on Criminal and Juvenile Justice for reducing recidivism and incarceration, including:

(a) responses to be used when an individual violates a condition of probation or parole;
(b) responses to recognize positive behavior and progress related to an individual's case action plan;

(c) when a violation of a condition of probation or parole should be reported to the court or the Board of Pardons and Parole; and

(d) a range of sanctions that may not exceed a period of incarceration of more than:

(i) three consecutive days; and

(ii) a total of five days in a period of 30 days.

(7) The commission shall establish graduated incentives to facilitate a prompt and effective response by the adult probation and parole section of the Department of Corrections to an offender's:

(a) compliance with the terms of probation or parole; and

(b) positive conduct that exceeds those terms.

(8) (a) The commission shall establish guidelines, including sanctions and incentives, to appropriately respond to negative and positive behavior of juveniles who are:

(i) nonjudicially adjusted;

(ii) placed on diversion;

(iii) placed on probation;

(iv) placed on community supervision;

(v) placed in an out-of-home placement; or

(vi) placed in a secure care facility.

(b) In establishing guidelines under this Subsection (8), the commission shall consider:

(i) the seriousness of the negative and positive behavior;

(ii) the juvenile's conduct post-adjudication; and

(iii) the delinquency history of the juvenile.

(c) The guidelines shall include:

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- (i) responses that are swift and certain;
- (ii) a continuum of community-based options for juveniles living at home;
- (iii) responses that target the individual's criminogenic risk and needs; and
- (iv) incentives for compliance, including earned discharge credits.

(9) The commission shall establish and maintain supervision length guidelines in accordance with this section.

(10) (a) The commission shall create sentencing guidelines and supervision length guidelines for the following financial and property offenses for which a pecuniary loss to a victim may exceed \$50,000:

- (i) securities fraud, Sections 61-1-1 and 61-1-21;
- (ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment adviser representative, Sections 61-1-3 and 61-1-21;
- (iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;
- (iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1,

Assault and Related Offenses;

- (v) arson, Section 76-6-102;
- (vi) burglary, Section 76-6-202;
- (vii) theft under Title 76, Chapter 6, Part 4, Theft;
- (viii) forgery, Section 76-6-501;
- (ix) unlawful dealing of property by a fiduciary, Section 76-6-513;
- (x) insurance fraud, Section 76-6-521;
- (xi) computer crimes, Section 76-6-703;
- (xii) mortgage fraud, Section 76-6-1203;
- (xiii) pattern of unlawful activity, Sections 76-10-1603 and 76-10-1603.5;
- (xiv) communications fraud, Section 76-10-1801;
- (xv) money laundering, Section 76-10-1904; and
- (xvi) other offenses in the discretion of the commission.

(b) The guidelines described in Subsection (10)(a) shall include a sentencing matrix with proportionate escalating sanctions based on the amount of a victim's loss.

(c) On or before August 1, 2022, the commission shall publish for public comment the guidelines described in Subsection (10)(a).

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(11) (a) Before January 1, 2023, the commission shall study the offenses of sexual exploitation of a minor and aggravated sexual exploitation of a minor under Sections 76-5b-201 and 76-5b-201.1.

(b) The commission shall update sentencing and release guidelines and juvenile disposition guidelines to reflect appropriate sanctions for an offense listed in Subsection (11)(a), including the application of aggravating and mitigating factors specific to the offense.

(12) (a) Before July 1, 2024, the commission shall create sentencing guidelines and supervision length guidelines for the following offenses:

(i) an interlock restricted driver operating a vehicle without an ignition interlock system, Section 41-6a-518.2;

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

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

(b) The guidelines under Subsection (12)(a) shall consider the following:

(i) the current sentencing requirements for driving under the influence of alcohol, drugs, or a combination of both as identified in Section 41-6a-505 when injury or death do not result;

(ii) the degree of injury and the number of victims suffering injury or death as a result of the offense;

(iii) the offender's number of previous convictions for driving under the influence related offenses as defined in Subsection 41-6a-501(2)(a);

(iv) the offender's number of convictions for an interlock restricted driver operating a vehicle without an ignition interlock system as described in Section 41-6a-518.2; and

(~~five~~v) whether the offender 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.

Section 9. 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.

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(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 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, as the term conviction is defined in Subsection 41-6a-501(2), that is a felony; or

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

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(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

(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. ~~(b)~~

~~(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

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is admissible except if prohibited by the Utah Rules of Evidence, the United States Constitution, or the Utah Constitution.

~~(f)(g)~~ 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 10. 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 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

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(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 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:

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(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 11. 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 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;~~

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- ~~—— (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;~~
- ~~—— (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:~~

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~~—— (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;~~

~~—— (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~~

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~~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 ~~{12}~~11. **Effective date.**

This bill takes effect on July 1, 2024.