

INDIGENT DEFENSE FUNDING AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions relating to the 24-7 sobriety program.

Highlighted Provisions:

This bill:

- ▶ 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 program;
- ▶ requires an individual for whom the department waived fees to reimburse the department under certain circumstances; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



28 Section 1. Section **41-6a-505** is amended to read:

29 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**
30 **drugs, or a combination of both violations.**

31 (1) As part of any sentence for a first conviction of Section **41-6a-502** where there is
32 admissible evidence that the individual had a blood or breath alcohol level of .16 or higher, had
33 a blood or breath alcohol level of .05 or higher in addition to any measurable controlled
34 substance, or had a combination of two or more controlled substances in the individual's body
35 that were not recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid
36 Research and Medical Cannabis, or prescribed:

37 (a) the court shall:

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

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

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

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

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

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

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

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

51 (B) if the administrative impound fee was paid by a party described in Subsection
52 **41-6a-1406(5)(a)**, other than the individual sentenced, order the individual sentenced to
53 reimburse the party;

54 (viii) (A) order the individual to pay the towing and storage fees described in Section
55 **72-9-603**; or

56 (B) if the towing and storage fees were paid by a party described in Subsection
57 **41-6a-1406(5)(a)**, other than the individual sentenced, order the individual sentenced to
58 reimburse the party; or

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

62 (b) the court may:

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

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

67 (iii) order a combination of Subsections (1)(b)(i) and (ii).

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

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

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

76 (a) the court shall:

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

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

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

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

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

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

86 (vi) (A) order the individual to pay the administrative impound fee described in Section
87 41-6a-1406; or

88 (B) if the administrative impound fee was paid by a party described in Subsection
89 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to

90 reimburse the party; or

91 (vii) (A) order the individual to pay the towing and storage fees described in Section
92 72-9-603; or

93 (B) if the towing and storage fees were paid by a party described in Subsection
94 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
95 reimburse the party; and

96 (b) the court may:

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

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

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

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

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

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

109 (5) If an individual has a prior conviction as defined in Section 41-6a-501 that is within
110 10 years of the current conviction under Section 41-6a-502 or the commission of the offense
111 upon which the current conviction is based and where there is admissible evidence that the
112 individual had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol
113 level of .05 or higher in addition to any measurable controlled substance, or had a combination
114 of two or more controlled substances in the individual's body that were not recommended in
115 accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or
116 prescribed:

117 (a) the court shall:

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

119 (B) impose a jail sentence of not less than 10 days in addition to home confinement of
120 not fewer than 60 consecutive days through the use of electronic monitoring that includes a

121 substance abuse testing instrument in accordance with Section 41-6a-506; or

122 (C) impose a jail sentence of not less than 10 days in addition to ordering the

123 individual to obtain substance abuse treatment, if the court finds that substance abuse treatment

124 is more likely to reduce recidivism and is in the interests of public safety;

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

126 (iii) order the individual to participate in an assessment, if it is found appropriate by a

127 screening under Subsection (5)(a)(ii);

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

129 order substance abuse treatment as described under Subsection (5)(b);

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

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

132 (vii) order the installation of an ignition interlock system as described in Section

133 41-6a-518;

134 (viii) (A) order the individual to pay the administrative impound fee described in

135 Section 41-6a-1406; or

136 (B) if the administrative impound fee was paid by a party described in Subsection

137 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to

138 reimburse the party; or

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

140 72-9-603; or

141 (B) if the towing and storage fees were paid by a party described in Subsection

142 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to

143 reimburse the party; and

144 (b) the court may:

145 (i) order the individual to obtain substance abuse treatment if the substance abuse

146 treatment program determines that substance abuse treatment is appropriate;

147 (ii) order the individual to participate in a [24/7] 24-7 sobriety program as defined in

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

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

150 (6) (a) If an individual described in Subsection (5) is participating in a [24/7] 24-7

151 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence

152 imposed under Subsection (5)(a) after the individual has served a minimum of:

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

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

158 (7) If an individual has a prior conviction as defined in Section 41-6a-501 that is within
159 10 years of the current conviction under Section 41-6a-502 or the commission of the offense
160 upon which the current conviction is based and that does not qualify under Subsection (5):

161 (a) the court shall:

- 162 (i) (A) impose a jail sentence of not less than 10 days; or
- 163 (B) impose a jail sentence of not less than 5 days in addition to home confinement of
164 not fewer than 30 consecutive days through the use of electronic monitoring that includes a
165 substance abuse testing instrument in accordance with Section 41-6a-506;

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

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

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

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

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

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

175 (B) if the administrative impound fee was paid by a party described in Subsection
176 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
177 reimburse the party; or

178 (viii) (A) order the individual to pay the towing and storage fees described in Section
179 72-9-603; or

180 (B) if the towing and storage fees were paid by a party described in Subsection
181 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
182 reimburse the party; and

183 (b) the court may:

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

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

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

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

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

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

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

197 (9) Under Subsection 41-6a-502(2)(c), if the court suspends the execution of a prison
198 sentence and places the defendant on probation where there is admissible evidence that the
199 individual had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol
200 level of .05 in addition to any measurable controlled substance, or had a combination of two or
201 more controlled substances in the [person's] individual's body that were not recommended in
202 accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research Medical Cannabis, or
203 prescribed, the court shall impose:

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

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

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

209 (d) supervised probation.

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

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

213 (ii) may impose an order requiring the individual to participate in a [24/7] 24-7 sobriety

214 program as defined in Section 41-6a-515.5 if the individual is 21 years old or older.

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

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

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

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

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

226 (d) supervised probation.

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

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

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

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

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

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

241 (b) one or more of the following:

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

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

245 device or remote alcohol monitor as a condition of probation for the individual; or
246 (iii) the imposition of home confinement through the use of electronic monitoring in
247 accordance with Section 41-6a-506.

248 Section 2. Section 41-6a-515.5 is amended to read:

249 **41-6a-515.5. Sobriety program for DUI.**

250 (1) As used in this section:

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

253 (i) requires an individual to abstain from alcohol or drugs for a period of time;

254 (ii) requires an individual to submit to random drug testing; and

255 (iii) requires the individual to be subject to testing to determine the presence of
256 alcohol:

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

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

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

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

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

265 (A) remote and in-person breath testing;

266 (B) drug patch testing;

267 (C) urinalysis testing;

268 (D) saliva testing;

269 (E) continuous remote sensing;

270 (F) transdermal alcohol monitoring; or

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

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

275 (3) (a) The 24-7 sobriety program shall include use of multiple testing methodologies

276 for the presence of alcohol or drugs that:

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

278 (ii) is available at an affordable cost; and

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

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

282 (i) whether a device is available;

283 (ii) whether the participant is capable of paying the fees and costs associated with each
284 testing methodology;

285 (iii) travel requirements based on each testing methodology and the participant's
286 circumstances;

287 (iv) the substance or substances for which testing will be required; and

288 (v) other factors the commissioner considers relevant.

289 (4) (a) The 24-7 sobriety program shall be supported by evidence of effectiveness and
290 satisfy at least two of the following categories:

291 (i) the program is included in the federal registry of evidence-based programs and
292 practices;

293 (ii) the program has been reported in a peer-reviewed journal as having positive effects
294 on the primary targeted outcome; or

295 (iii) the program has been documented as effective by informed experts and other
296 sources.

297 (b) If a law enforcement agency participates in a 24-7 sobriety program, the department
298 shall assist in the creation and administration of the program in the manner provided in this
299 section.

300 (c) A 24-7 sobriety program shall have at least one testing location and two daily
301 testing times approximately 12 hours apart.

302 (d) ~~[A person]~~ An individual who is ordered by a judge to participate in the 24-7
303 sobriety program for a first conviction as defined in Subsection 41-6a-501(2) shall be required
304 to participate in a 24-7 sobriety program for at least 30 days.

305 (e) If ~~[a person]~~ an individual who is ordered by a judge to participate in the 24-7
306 sobriety program has a prior conviction as defined in Subsection 41-6a-501(2) that is within 10

307 years of the current conviction under Section 41-6a-502 or the commission of the offense upon
308 which the current conviction is based, the ~~[person]~~ individual shall be required to participate in
309 a 24-7 sobriety program for at least one year.

310 (5) (a) If a law enforcement agency participates in a 24-7 sobriety program, the law
311 enforcement agency may designate an entity to provide the testing services or to take any other
312 action required or authorized to be provided by the law enforcement agency pursuant to this
313 section, except that the law enforcement agency's designee may not determine whether an
314 individual is required to participate in the 24-7 sobriety program.

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

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

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

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

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

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

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

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

330 (iii) establish a process for determining indigency for purposes of waiving all or some
331 participation and testing fees in accordance with Subsection (8);

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

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

337 (8) (a) The department shall waive participation and testing fees entirely or in part for

338 indigent individuals as defined in Section [78B-22-102](#).

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

341 (c) Any individual for whom the department waived fees under this Subsection (8)
342 shall reimburse the department for any waived fees if:

343 (i) the individual fails to successfully complete all of the requirements of the 24-7
344 sobriety program; or

345 (ii) during the individual's participation in the program, the department determines the
346 individual is no longer indigent.

347 Section 3. **Effective date.**

348 This bill takes effect on May 1, 2024.