

**Representative Steve Eliason** proposes the following substitute bill:

**DRIVING UNDER THE INFLUENCE SENTENCING**

**AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill amends provisions related to penalties for driving under the influence and related offenses.

**Highlighted Provisions:**

This bill:

- ▶ prohibits sentencing reductions for driving under the influence related offenses in certain circumstances;
- ▶ requires reinstatement of certain sentences if an individual fails to complete certain requirements of an approved 24/7 sobriety program;
- ▶ creates a separate offense for each person in a vehicle that is under 16 years old when the driver is operating the vehicle while under the influence of drugs or alcohol;
- ▶ prohibits an impaired driving reduction if:
  - the person had a blood alcohol level of .16 or higher;
  - the person had a blood alcohol level of .05 or higher in addition to any measurable controlled substance in the person's body; or
  - the person had a combination of two or more controlled substances in the



26 person's body that were not appropriately prescribed or recommended;

27       ▶ prohibits a plea in abeyance for certain offenses related to driving under the  
28 influence; and

29       ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       None

34 **Utah Code Sections Affected:**

35 AMENDS:

36       **41-6a-502.5**, as last amended by Laws of Utah 2015, Chapter 438

37       **41-6a-503**, as last amended by Laws of Utah 2020, Chapter 177

38       **41-6a-505**, as last amended by Laws of Utah 2019, Chapter 136

39       **41-6a-512**, as last amended by Laws of Utah 2015, Chapter 438

40       **77-2a-3**, as last amended by Laws of Utah 2008, Chapters 3, 339, and 382



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

43       Section 1. Section **41-6a-502.5** is amended to read:

44       **41-6a-502.5. Impaired driving -- Penalty -- Reporting of convictions -- Sentencing**  
45 **requirements.**

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

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

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

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

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

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

55       (ii) If the defendant fails to appear before the court and establish successful completion  
56 of the court ordered probation requirements under Subsection (1)(a), the court shall enter an

57 amended conviction of Section [41-6a-502](#).

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

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

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

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

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

72 (6) (a) The provisions in Subsections [~~[41-6a-505\(1\), \(2\), and \(4\)](#)~~] [41-6a-505\(1\), \(3\),](#)  
73 [\(5\), and \(7\)](#) that require a sentencing court to order a convicted person to participate in a  
74 screening, an assessment, or an educational series, or obtain substance abuse treatment or do a  
75 combination of those things, apply to a conviction entered under this section.

76 (b) The court shall render the same order regarding screening, assessment, an  
77 educational series, or substance abuse treatment in connection with a first, second, or  
78 subsequent conviction under this section as the court would render in connection with applying  
79 respectively, the first, second, or subsequent conviction requirements of [~~Subsection~~]  
80 Subsections [~~[41-6a-505\(1\), \(2\), or \(4\)](#)~~] [41-6a-505\(1\), \(3\), \(5\), and \(7\)](#).

81 (7) (a) Except as provided in Subsection (7)(b), a report authorized by Section  
82 [53-3-104](#) may not contain any evidence of a conviction for impaired driving in this state if the  
83 reporting court notifies the Driver License Division that the defendant is participating in or has  
84 successfully completed the program of a driving under the influence court.

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

86 (i) a CDL license holder; or

87 (ii) a violation that occurred in a commercial motor vehicle.

- 88 (8) The provisions of this section are not available;
- 89 (a) to a person who has a prior conviction as that term is defined in Subsection
- 90 41-6a-501(2); or
- 91 (b) where there is admissible evidence that the individual:
- 92 (i) had a blood alcohol level of .16 or higher;
- 93 (ii) had a blood alcohol level of .05 or higher in addition to any measurable controlled
- 94 substance; or
- 95 (iii) had a combination of two or more controlled substances in the person's body that
- 96 were not:
- 97 (A) prescribed by a licensed physician; or
- 98 (B) recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis
- 99 Act.

100 Section 2. Section **41-6a-503** is amended to read:

101 **41-6a-503. Penalties for driving under the influence violations.**

102 (1) A person who violates for the first or second time Section **41-6a-502** is guilty of a:

- 103 (a) class B misdemeanor; or
- 104 (b) class A misdemeanor if the person:
- 105 (i) has also inflicted bodily injury upon another as a proximate result of having
- 106 operated the vehicle in a negligent manner;
- 107 (ii) had a passenger under 16 years of age in the vehicle at the time of the offense;
- 108 (iii) was 21 years of age or older and had a passenger under 18 years of age in the
- 109 vehicle at the time of the offense; or
- 110 (iv) at the time of the violation of Section **41-6a-502**, also violated Section **41-6a-712**
- 111 or **41-6a-714**.

112 (2) A person who violates Section **41-6a-502** is guilty of a third degree felony if:

- 113 (a) the person has also inflicted serious bodily injury upon another as a proximate
- 114 result of having operated the vehicle in a negligent manner;
- 115 (b) the person has two or more prior convictions as defined in Subsection
- 116 **41-6a-501(2)**, each of which is within 10 years of:
- 117 (i) the current conviction under Section **41-6a-502**; or
- 118 (ii) the commission of the offense upon which the current conviction is based; or

119 (c) the conviction under Section 41-6a-502 is at any time after a conviction of:  
120 (i) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;  
121 (ii) a felony violation of Section 41-6a-502 or a statute previously in effect in this state  
122 that would constitute a violation of Section 41-6a-502 that is committed after July 1, 2001; or  
123 (iii) any conviction described in Subsection (2)(c)(i) or (ii) which judgment of  
124 conviction is reduced under Section 76-3-402.

125 (3) A person is guilty of a separate offense for each victim suffering bodily injury or  
126 serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a  
127 result of the person's violation of Section 76-5-207 whether or not the injuries arise from the  
128 same episode of driving.

129 (4) A person is guilty of a separate offense under Subsection (1)(b)(ii) for each  
130 passenger in the vehicle at the time of the offense that is under 16 years old.

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

132 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**  
133 **drugs, or a combination of both violations.**

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

140 (a) the court shall:

141 (i) (A) impose a jail sentence of not less than ~~[48 consecutive hours]~~ five days; or

142 (B) ~~[require the individual to work in a compensatory-service work program for not~~  
143 ~~less than 48 hours;]~~ impose a jail sentence of not less than two days in addition to home  
144 confinement of not fewer than 30 consecutive days through the use of electronic monitoring  
145 that includes a substance abuse testing instrument in accordance with Section 41-6a-506;

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

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

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

150 order substance abuse treatment as described under Subsection (1)(b);  
151 (v) impose a fine of not less than \$700;  
152 (vi) order probation for the individual in accordance with Section 41-6a-507~~[, if there~~  
153 ~~is admissible evidence that the individual had a blood alcohol level of .16 or higher];~~  
154 (vii) (A) order the individual to pay the administrative impound fee described in  
155 Section 41-6a-1406; or  
156 (B) if the administrative impound fee was paid by a party described in Subsection  
157 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
158 reimburse the party; or  
159 (viii) (A) order the individual to pay the towing and storage fees described in Section  
160 72-9-603; or  
161 (B) if the towing and storage fees were paid by a party described in Subsection  
162 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
163 reimburse the party; and  
164 (b) the court may:  
165 (i) order the individual to obtain substance abuse treatment if the substance abuse  
166 treatment program determines that substance abuse treatment is appropriate;  
167 (ii) order probation for the individual in accordance with Section 41-6a-507;  
168 (iii) order the individual to participate in a ~~[24-7]~~ 24/7 sobriety program as defined in  
169 Section 41-6a-515.5 if the individual is 21 years ~~[of age]~~ old or older; or  
170 (iv) order a combination of Subsections (1)(b)(i) through (iii).  
171 (2) (a) If an individual described in Subsection (1) is participating in a 24/7 sobriety  
172 program as defined in Section 41-6a-515.5, the court may suspend the jail sentence imposed  
173 under Subsection (1)(a).  
174 (b) If an individual described in Subsection (1) fails to successfully complete all of the  
175 requirements of the 24/7 sobriety program, the court shall impose the suspended jail sentence  
176 described in Subsection (2)(a).  
177 (3) As part of any sentence for any first conviction of Section 41-6a-502 not described  
178 in Subsection (1):  
179 (a) the court shall:  
180 (i) (A) impose a jail sentence of not less than 2 days; or

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

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

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

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

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

189 (vi) (A) order the individual to pay the administrative impound fee described in Section  
190 41-6a-1406; or

191 (B) if the administrative impound fee was paid by a party described in Subsection  
192 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
193 reimburse the party; or

194 (vii) (A) order the individual to pay the towing and storage fees described in Section  
195 72-9-603; or

196 (B) if the towing and storage fees were paid by a party described in Subsection  
197 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
198 reimburse the party; and

199 (b) the court may:

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

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

203 (iii) order the individual to participate in a 24/7 sobriety program as defined in Section  
204 41-6a-515.5 if the individual is 21 years old or older; or

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

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

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

212           ~~[(2)]~~ (5) If an individual has a prior conviction as defined in Subsection 41-6a-501(2)  
213 that is within 10 years of the current conviction under Section 41-6a-502 or the commission of  
214 the offense upon which the current conviction is based and where there is admissible evidence  
215 that the individual had a blood alcohol level of .16 or higher, had a blood alcohol level of .05 or  
216 higher in addition to any measurable controlled substance, or had a combination of two or more  
217 controlled substances in the individual's body that were not recommended in accordance with  
218 Title 26, Chapter 61a, Utah Medical Cannabis Act or prescribed:

219           (a) the court shall:

220           (i) (A) impose a jail sentence of not less than ~~[240 hours]~~ 20 days; or

221           (B) impose a jail sentence of not less than ~~[120 hours]~~ 10 days in addition to home  
222 confinement of not fewer than ~~[720 consecutive hours]~~ 60 consecutive days through the use of  
223 electronic monitoring that includes a substance abuse testing instrument in accordance with  
224 Section 41-6a-506;

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

226           (iii) order the individual to participate in an assessment, if it is found appropriate by a  
227 screening under Subsection ~~[(2)]~~ (5)(a)(ii);

228           (iv) order the individual to participate in an educational series if the court does not  
229 order substance abuse treatment as described under Subsection ~~[(2)]~~ (5)(b);

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

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

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

234           (B) if the administrative impound fee was paid by a party described in Subsection  
235 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
236 reimburse the party; or

237           (viii) (A) order the individual to pay the towing and storage fees described in Section  
238 72-9-603; or

239           (B) if the towing and storage fees were paid by a party described in Subsection  
240 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
241 reimburse the party; and

242           (b) the court may:



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

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

247 (iii) order a combination of Subsections ~~[(2)]~~ (5)(b)(i) and (ii).

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

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

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

256 (7) If an individual has a prior conviction as defined in Subsection [41-6a-501\(2\)](#) that is  
257 within 10 years of the current conviction under Section [41-6a-502](#) or the commission of the  
258 offense upon which the current conviction is based and that does not qualify under Subsection  
259 (5):

260 (a) the court shall:

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

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

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

270 (v) impose a fine of not less than \$800;  
271 (vi) order probation for the individual in accordance with Section [41-6a-507](#);  
272 (vii) (A) order the individual to pay the administrative impound fee described in  
273 Section [41-6a-1406](#); or

274 (B) if the administrative impound fee was paid by a party described in Subsection  
275 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
276 reimburse the party; or

277 (viii) (A) order the individual to pay the towing and storage fees described in Section  
278 72-9-603; or

279 (B) if the towing and storage fees were paid by a party described in Subsection  
280 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to  
281 reimburse the party; and

282 (b) the court may:

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

285 (ii) order the individual to participate in a 24/7 sobriety program as defined in Section  
286 41-6a-515.5 if the individual is 21 years old or older; or

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

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

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

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

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

296 [~~(3)~~] (9) Under Subsection 41-6a-503(2), if the court suspends the execution of a  
297 prison sentence and places the defendant on probation where there is admissible evidence that  
298 the individual had a blood alcohol level of .16 or higher, had a blood alcohol level of .05 in  
299 addition to any measurable controlled substance, or had a combination of two or more  
300 controlled substances in the person's body that were not recommended in accordance with Title  
301 26, Chapter 61a, Utah Medical Cannabis Act or prescribed, the court shall impose:

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

303 (b) a jail sentence of not less than [~~1,500 hours~~] 120 days; [~~and~~]

304 (c) home confinement of not fewer than 120 consecutive days through the use of

305 electronic monitoring that includes a substance abuse testing instrument in accordance with  
306 Section 41-6a-506; and

307 ~~[(c)]~~ (d) supervised probation.

308 ~~[(4)]~~ (10) (a) For Subsection ~~[(3)]~~ (9) or Subsection 41-6a-503(2)(b), the court:

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

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

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

317 ~~[(5) The requirements of Subsections (1)(a), (2)(a), (3), and (4) may not be suspended.]~~

318 (11) Under Subsection 41-6a-503(2), if the court suspends the execution of a prison  
319 sentence and places the defendant on probation with a sentence not described in Subsection (9),  
320 the court shall impose:

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

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

323 (c) home confinement of not fewer than 60 consecutive days through the use of  
324 electronic monitoring that includes a substance abuse testing instrument in accordance with

325 Section 41-6a-506; and

326 (d) supervised probation.

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

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

331 (b) A court or jail may not convert a jail sentence required in this section to electronic  
332 home confinement.

333 ~~[(6)]~~ (13) If an individual is convicted of a violation of Section 41-6a-502 and there is  
334 admissible evidence that the individual had a blood alcohol level of .16 or higher, the court  
335 shall order the following, or describe on record why the order or orders are not appropriate:

336 (a) treatment as described under Subsection (1)(b), [~~(2)(b), or (4)~~] (3)(b), (5)(b), or  
337 (7)(b); and

338 (b) one or more of the following:

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

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

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

345 Section 4. Section 41-6a-512 is amended to read:

346 **41-6a-512. Factual basis for alcohol or drug-related reckless driving plea.**

347 (1) (a) The prosecution shall state for the record a factual basis for a plea, including  
348 whether or not there had been consumption of alcohol, drugs, or a combination of both, by the  
349 defendant in connection with the violation when the prosecution agrees to a plea of guilty or no  
350 contest to a charge of a violation of the following in satisfaction of, or as a substitute for, an  
351 original charge of a violation of Section 41-6a-502 for an offense committed before July 1,  
352 2008:

353 (i) reckless driving under Section 41-6a-528; or

354 (ii) an ordinance enacted under Section 41-6a-510.

355 (b) The statement under Subsection (1)(a) is an offer of proof of the facts that shows  
356 whether there was consumption of alcohol, drugs, or a combination of both, by the defendant,  
357 in connection with the violation.

358 (2) The court shall advise the defendant before accepting the plea offered under this  
359 section of the consequences of a violation of Section 41-6a-528.

360 (3) The court shall notify the Driver License Division of each conviction of Section  
361 41-6a-528 entered under this section.

362 (4) (a) The provisions in Subsections [~~41-6a-505(1), (2), and (4)~~] 41-6a-505(1), (3),  
363 (5), and (7) that require a sentencing court to order a convicted person to participate in a  
364 screening, an assessment, or an educational series or obtain substance abuse treatment or do a  
365 combination of those things, apply to a conviction for a violation of Section 41-6a-528 under  
366 Subsection (1).

367 (b) The court shall render the same order regarding screening, assessment, an  
368 educational series, or substance abuse treatment in connection with a first, second, or  
369 subsequent conviction under Section [41-6a-528](#) under Subsection (1), as the court would  
370 render in connection with applying respectively, the first, second, or subsequent conviction  
371 requirements of Subsections [~~41-6a-505(1), (2), and (4)~~] [41-6a-505\(1\), \(3\), \(5\), and \(7\)](#).

372 Section 5. Section **77-2a-3** is amended to read:

373 **77-2a-3. Manner of entry of plea -- Powers of court.**

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

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

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

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

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

383 (3) Upon finding that a defendant has successfully completed the terms of a plea in  
384 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as  
385 provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a  
386 defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not  
387 invoke Section [76-3-402](#) to further reduce the degree of the offense.

388 (4) The court may require the Department of Corrections to assist in the administration  
389 of the plea in abeyance agreement as if the defendant were on probation to the court under  
390 Section [77-18-1](#).

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

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

398 (b) an order that the defendant pay restitution to the victims of the defendant's actions  
399 as provided in Title 77, Chapter 38a, Crime Victims Restitution Act;

400 (c) an order that the defendant pay the costs of any remedial or rehabilitative program  
401 required by the terms of the agreement; and

402 (d) an order that the defendant comply with any other conditions which could have  
403 been imposed as conditions of probation upon conviction and sentencing for the same offense.

404 (6) A court may not hold a plea in abeyance without the consent of both the  
405 prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a  
406 plea in abeyance is final.

407 (7) No plea may be held in abeyance in any case involving a sexual offense against a  
408 victim who is under the age of 14.

409 (8) [~~Beginning on July 1, 2008, no~~] No plea may be held in abeyance in any case  
410 involving a driving under the influence violation under Section [41-6a-502](#), [41-6a-502.5](#),  
411 [41-6a-517](#), or [41-6a-520](#).