

Representative Steve Eliason proposes the following substitute bill:

DUI OFFENSE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Eliason

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ provides that an actor is guilty of a class A misdemeanor when the actor commits driving under the influence while also operating a vehicle in the opposite direction of traffic on a one-way highway with more than one lane of traffic;

- ▶ reduces the blood alcohol concentration allowed for an individual to plea down to impaired driving;

- ▶ 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 of Public Safety waived fees to reimburse the Department of Public Safety under certain circumstances;

- ▶ provides mandatory minimum sentences for certain individuals with prior convictions for driving under the influence who violate ignition interlock requirements;



26 ▶ clarifies that an ignition interlock restriction period begins on the date of installation
27 of the ignition interlock system;

28 ▶ clarifies that the prohibition on operating a motor vehicle without an ignition
29 interlock system installed on the vehicle begins on the date of conviction, not the
30 date of installation of the ignition interlock system;

31 ▶ amends penalties for subsequent offenses related to refusal of a chemical test or
32 negligent operation of a vehicle that results in injury;

33 ▶ requires the Sentencing Commission to amend sentencing guidelines for certain
34 offenses of negligent operation of a vehicle that results in injury when there is
35 evidence that the individual was also driving under the influence;

36 ▶ amends provisions related to pretrial detention of an individual arrested for driving
37 under the influence with another case pending or while on probation for a previous
38 offense of driving under the influence;

39 ▶ requires pretrial detention or electronic monitoring for an individual that is arrested
40 for driving under the influence while already on probation for or while another case
41 is pending for driving under the influence; and

42 ▶ makes technical changes.

43 **Money Appropriated in this Bill:**

44 None

45 **Other Special Clauses:**

46 This bill provides a special effective date.

47 **Utah Code Sections Affected:**

48 AMENDS:

49 **41-6a-502**, as last amended by Laws of Utah 2023, Chapter 415

50 **41-6a-502.5**, as last amended by Laws of Utah 2023, Chapter 328

51 **41-6a-505**, as last amended by Laws of Utah 2023, Chapters 328, 415

52 **41-6a-515.5**, as last amended by Laws of Utah 2021, Chapter 83

53 **41-6a-518.2**, as last amended by Laws of Utah 2023, Chapters 384, 415

54 **41-6a-520.1**, as enacted by Laws of Utah 2023, Chapter 415

55 **53-3-1007**, as last amended by Laws of Utah 2023, Chapter 384

56 **63M-7-404**, as last amended by Laws of Utah 2023, Chapter 111

57 [76-5-102.1](#), as last amended by Laws of Utah 2023, Chapters 111, 415

58 [77-20-201](#), as last amended by Laws of Utah 2023, Chapter 408

59 [77-40a-303](#), as last amended by Laws of Utah 2023, Chapter 265

60

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

62 Section 1. Section [41-6a-502](#) is amended to read:

63 **[41-6a-502. Driving under the influence of alcohol, drugs, or a combination of](#)**
64 **[both or with specified or unsafe blood alcohol concentration -- Penalties -- Reporting of](#)**
65 **[convictions.](#)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91 (A) the current conviction; or

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

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

94 (A) a felony conviction; or

95 (B) any conviction described in Subsection (2)(c)(ii)(A) for which judgment of

96 conviction is reduced under Section 76-3-402.

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

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

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

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

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

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

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

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

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

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

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

119 **41-6a-502.5. Impaired driving -- Penalty -- Reporting of convictions -- Sentencing**
120 **requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

150 apply to a conviction entered under this section.

151 (b) The court shall render the same order regarding screening, assessment, an
152 educational series, or substance abuse treatment in connection with a first, second, or
153 subsequent conviction under this section as the court would render in connection with applying
154 respectively, the first, second, or subsequent conviction requirements of Subsections
155 41-6a-505(1), (3), (5), and (7).

156 (7) (a) Except as provided in Subsection (7)(b), a report authorized by Section
157 53-3-104 may not contain any evidence of a conviction for impaired driving in this state if the
158 reporting court notifies the Driver License Division that the defendant is participating in or has
159 successfully completed the program of a driving under the influence court.

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

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

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

164 (a) to a person who has a prior conviction as that term is defined in Subsection
165 41-6a-501(2); or

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

167 (i) except as provided in Subsection (9), had a blood or breath alcohol level of [~~+~~].11
168 or higher;

169 (ii) had a blood or breath alcohol level of .05 or higher in addition to any measurable
170 controlled substance; or

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

173 (A) prescribed by a licensed physician; or

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

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

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

181 (ii) (A) wear an ankle attached continuous transdermal alcohol monitoring device or
182 remote alcohol monitor not fewer than 90 consecutive days; or

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

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

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

188 (i) failure to install an ignition interlock system in accordance with [41-6a-518](#);

189 (ii) removal of an ignition interlock system prior to the expiration of the required
190 18-month period as described in Subsection (9)(a)(i);

191 (iii) detection of alcohol or tampering with the device during the 90-day transdermal
192 alcohol monitoring period described in Subsection (9)(a)(ii)(A); or

193 (iv) failure to successfully complete the 24-7- sobriety program as described in
194 Subsection (9)(a)(ii)(B).

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

196 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**
197 **drugs, or a combination of both violations.**

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

204 (a) the court shall:

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

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

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

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

212 (iv) order the individual to participate in an educational series if the court does not
213 order substance abuse treatment as described under Subsection (1)(b);
214 (v) impose a fine of not less than \$700;
215 (vi) order probation for the individual in accordance with Section 41-6a-507;
216 (vii) (A) order the individual to pay the administrative impound fee described in
217 Section 41-6a-1406; or
218 (B) if the administrative impound fee was paid by a party described in Subsection
219 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
220 reimburse the party;
221 (viii) (A) order the individual to pay the towing and storage fees described in Section
222 72-9-603; or
223 (B) if the towing and storage fees were paid by a party described in Subsection
224 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
225 reimburse the party; or
226 (ix) unless the court determines and states on the record that an ignition interlock
227 system is not necessary for the safety of the community and in the best interest of justice, order
228 the installation of an ignition interlock system as described in Section 41-6a-518; and
229 (b) the court may:
230 (i) order the individual to obtain substance abuse treatment if the substance abuse
231 treatment program determines that substance abuse treatment is appropriate;
232 (ii) order the individual to participate in a [24/7] 24-7 sobriety program as defined in
233 Section 41-6a-515.5 if the individual is 21 years old or older; or
234 (iii) order a combination of Subsections (1)(b)(i) and (ii).
235 (2) (a) If an individual described in Subsection (1) is participating in a [24/7] 24-7
236 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence
237 imposed under Subsection (1)(a).
238 (b) If an individual described in Subsection (1) fails to successfully complete all of the
239 requirements of the [24/7] 24-7 sobriety program, the court shall impose the suspended jail
240 sentence described in Subsection (2)(a).
241 (3) As part of any sentence for any first conviction of Section 41-6a-502 not described
242 in Subsection (1):

- 243 (a) the court shall:
- 244 (i) (A) impose a jail sentence of not less than two days; or
- 245 (B) require the individual to work in a compensatory-service work program for not less
- 246 than 48 hours;
- 247 (ii) order the individual to participate in a screening;
- 248 (iii) order the individual to participate in an assessment, if it is found appropriate by a
- 249 screening under Subsection (3)(a)(ii);
- 250 (iv) order the individual to participate in an educational series if the court does not
- 251 order substance abuse treatment as described under Subsection (3)(b);
- 252 (v) impose a fine of not less than \$700;
- 253 (vi) (A) order the individual to pay the administrative impound fee described in Section
- 254 41-6a-1406; or
- 255 (B) if the administrative impound fee was paid by a party described in Subsection
- 256 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
- 257 reimburse the party; or
- 258 (vii) (A) order the individual to pay the towing and storage fees described in Section
- 259 72-9-603; or
- 260 (B) if the towing and storage fees were paid by a party described in Subsection
- 261 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
- 262 reimburse the party; and
- 263 (b) the court may:
- 264 (i) order the individual to obtain substance abuse treatment if the substance abuse
- 265 treatment program determines that substance abuse treatment is appropriate;
- 266 (ii) order probation for the individual in accordance with Section 41-6a-507;
- 267 (iii) order the individual to participate in a [24/7] 24-7 sobriety program as defined in
- 268 Section 41-6a-515.5 if the individual is 21 years old or older; or
- 269 (iv) order a combination of Subsections (3)(b)(i) through (iii).
- 270 (4) (a) If an individual described in Subsection (3) is participating in a [24/7] 24-7
- 271 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence
- 272 imposed under Subsection (3)(a).
- 273 (b) If an individual described in Subsection (4)(a) fails to successfully complete all of

274 the requirements of the [24/7] 24-7 sobriety program, the court shall impose the suspended jail
275 sentence described in Subsection (4)(a).

276 (5) If an individual has a prior conviction as defined in Section 41-6a-501 that is within
277 10 years of the current conviction under Section 41-6a-502 or the commission of the offense
278 upon which the current conviction is based and where there is admissible evidence that the
279 individual had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol
280 level of .05 or higher in addition to any measurable controlled substance, or had a combination
281 of two or more controlled substances in the individual's body that were not recommended in
282 accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, or
283 prescribed:

284 (a) the court shall:

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

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

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

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

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

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

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

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

299 (vii) order the installation of an ignition interlock system as described in Section
300 41-6a-518;

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

303 (B) if the administrative impound fee was paid by a party described in Subsection
304 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to

305 reimburse the party; or
306 (ix) (A) order the individual to pay the towing and storage fees described in Section
307 72-9-603; or
308 (B) if the towing and storage fees were paid by a party described in Subsection
309 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
310 reimburse the party; and
311 (b) the court may:
312 (i) order the individual to obtain substance abuse treatment if the substance abuse
313 treatment program determines that substance abuse treatment is appropriate;
314 (ii) order the individual to participate in a [24/7] 24-7 sobriety program as defined in
315 Section 41-6a-515.5 if the individual is 21 years old or older; or
316 (iii) order a combination of Subsections (5)(b)(i) and (ii).
317 (6) (a) If an individual described in Subsection (5) is participating in a [24/7] 24-7
318 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail sentence
319 imposed under Subsection (5)(a) after the individual has served a minimum of:
320 (i) five days of the jail sentence for a second offense; or
321 (ii) 10 days of the jail sentence for a third or subsequent offense.
322 (b) If an individual described in Subsection (6)(a) fails to successfully complete all of
323 the requirements of the [24/7] 24-7 sobriety program, the court shall impose the suspended jail
324 sentence described in Subsection (6)(a).
325 (7) If an individual has a prior conviction as defined in Section 41-6a-501 that is within
326 10 years of the current conviction under Section 41-6a-502 or the commission of the offense
327 upon which the current conviction is based and that does not qualify under Subsection (5):
328 (a) the court shall:
329 (i) (A) impose a jail sentence of not less than 10 days; or
330 (B) impose a jail sentence of not less than 5 days in addition to home confinement of
331 not fewer than 30 consecutive days through the use of electronic monitoring that includes a
332 substance abuse testing instrument in accordance with Section 41-6a-506;
333 (ii) order the individual to participate in a screening;
334 (iii) order the individual to participate in an assessment, if it is found appropriate by a
335 screening under Subsection (7)(a)(ii);

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

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

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

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

342 (B) if the administrative impound fee was paid by a party described in Subsection
343 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
344 reimburse the party; or

345 (viii) (A) order the individual to pay the towing and storage fees described in Section
346 72-9-603; or

347 (B) if the towing and storage fees were paid by a party described in Subsection
348 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
349 reimburse the party; and

350 (b) the court may:

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

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

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

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

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

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

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

364 (9) Under Subsection 41-6a-502(2)(c), if the court suspends the execution of a prison
365 sentence and places the defendant on probation where there is admissible evidence that the
366 individual had a blood or breath alcohol level of .16 or higher, had a blood or breath alcohol

367 level of .05 in addition to any measurable controlled substance, or had a combination of two or
368 more controlled substances in the [person's] individual's body that were not recommended in
369 accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research Medical Cannabis, or
370 prescribed, the court shall impose:

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

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

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

376 (d) supervised probation.

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

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

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

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

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

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

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

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

393 (d) supervised probation.

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

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

397 (b) A court, with stipulation of both parties and approval from the judge, may convert a

398 jail sentence required in this section to electronic home confinement.

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

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

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

408 (b) one or more of the following:

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

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

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

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

416 **41-6a-515.5. Sobriety program for DUI.**

417 (1) As used in this section:

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

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

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

422 (iii) requires the individual to be subject to testing to determine the presence of
423 alcohol:

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

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

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

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

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

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

433 (B) drug patch testing;

434 (C) urinalysis testing;

435 (D) saliva testing;

436 (E) continuous remote sensing;

437 (F) transdermal alcohol monitoring; or

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

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

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

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

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

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

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

449 (i) whether a device is available;

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

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

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

455 (v) other factors the commissioner considers relevant.

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

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

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

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

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

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

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

472 (e) If [~~a person~~] an individual who is ordered by a judge to participate in the 24-7
473 sobriety program has a prior conviction as defined in Subsection 41-6a-501(2) that is within 10
474 years of the current conviction under Section 41-6a-502 or the commission of the offense upon
475 which the current conviction is based, the [~~person~~] individual shall be required to participate in
476 a 24-7 sobriety program for at least one year.

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

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

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

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

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

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

491 (b) The rules under Subsection (7)(a) shall:
492 (i) provide for the nature and manner of testing and the procedures and apparatus to be
493 used for testing;
494 (ii) establish reasonable participation and testing fees for the program, including the
495 collection of fees to pay the cost of installation, monitoring, and deactivation of any testing
496 device;
497 (iii) establish a process for determining indigency and waiving of a portion of the
498 participation and testing fees for indigent individuals in accordance with Subsection (8);
499 ~~[(iii)]~~ (iv) require and provide for the approval of a 24-7 sobriety program data
500 management technology plan that shall be used by the department and participating law
501 enforcement agencies to manage testing, data access, fees and fee payments, and any required
502 reports; and
503 ~~[(iv)]~~ (v) establish a model sanctioning schedule for program noncompliance.
504 (8) (a) The department may waive the department's portion of the participation and
505 testing fees, entirely or in part, for individuals who meet the requirements for indigency
506 provided in Section [78B-22-202](#).
507 (b) The department may not waive the portion of the participation and testing fees that
508 are retained by a participating law enforcement agency or testing program site.
509 (c) The department may periodically adjust participation and testing fees to offset lost
510 program revenue resulting from any fee waivers.
511 (d) If an individual for whom the department waived fees under this Subsection (8)
512 fails to successfully complete all of the requirements of the 24-7 sobriety program, a court may
513 order the individual to pay the department for any waived fees.
514 Section 5. Section **41-6a-518.2** is amended to read:
515 **41-6a-518.2. Interlock restricted driver -- Penalties for operation without ignition**
516 **interlock system -- Exemptions.**
517 (1) As used in this section:
518 (a) "Ignition interlock system" means a constant monitoring device or any similar
519 device that:
520 (i) is in working order at the time of operation or actual physical control; and
521 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection

522 41-6a-518(8).

523 (b) [(i) "Interlock restricted driver" means a person who:]

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

526 [(B) within the last 18 months has been convicted of a violation under Section
527 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1;]

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

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

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

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

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

539 [(G) within the last six years has been convicted of a felony violation of Section
540 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1 for an offense that occurred after
541 May 1, 2006; or]

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

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

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

549 (A) has been convicted of a violation under Section 41-6a-502, Subsection
550 41-6a-520.1(1), or Section 76-5-102.1;

551 (B) has been convicted of an offense which would be a conviction as defined under
552 Section 41-6a-501, and that offense is committed within 10 years from the date that one or

553 more prior offenses was committed if the prior offense resulted in a conviction as defined in
 554 Section 41-6a-501;

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

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

558 (E) has been convicted of a felony violation of Section 41-6a-502, Subsection
 559 41-6a-520.1(1), or Section 76-5-102.1;

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

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

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

564 (A) whose current conviction described in Subsection ~~[(f)](b)(i)(C)(f)]~~ (1)(b)(ii)(B) is a
 565 conviction under Section 41-6a-502 that does not involve alcohol or a conviction under Section
 566 41-6a-517 and whose prior convictions described in Subsection ~~[(f)](b)(i)(C)(H)]~~ (1)(b)(ii)(B)
 567 are all convictions under Section 41-6a-502 that did not involve alcohol or convictions under
 568 Section 41-6a-517;

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

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

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

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

580 (ii) for a person described in Subsection (1)(b)(ii)(G), the effective date of the
 581 revocation.

582 (b) The ignition interlock restriction period for an ignition interlock restricted driver
 583 under Subsection (1)(b)(ii) ends:

584 (i) for a violation described in Subsection (1)(b)(ii)(A), 18 months from the day the
585 ignition interlock restricted driver:

586 (A) provides proof of installation of the ignition interlock system; and

587 (B) reinstates their driving privilege;

588 (ii) for a violation described in Subsections (1)(b)(ii)(B) through (D) and Subsection
589 (1)(b)(ii)(G), two years from the date the ignition interlock restricted driver:

590 (A) provides proof of installation of the ignition interlock system; and

591 (B) reinstates their driving privilege;

592 (iii) for a violation described in Subsection (1)(b)(ii)(E), three years from the date the
593 ignition interlock restricted driver:

594 (A) provides proof of installation of the ignition interlock system; and

595 (B) reinstates their driving privilege; and

596 (iv) for a violation described in Subsection (1)(b)(ii)(F), four years from the date the
597 ignition interlock restricted driver:

598 (A) provides proof of installation of the ignition interlock system; and

599 (B) reinstates their driving privilege.

600 (c) If an ignition interlock system is removed from the vehicle before the restriction
601 period under Subsection (2)(b) has ended, the ignition interlock restriction period is extended
602 by the number of days the ignition interlock system was removed from the persons vehicle.

603 ~~[(2)]~~ (3) The division shall post the ignition interlock restriction on a person's
604 electronic record that is available to law enforcement.

605 ~~[(3)]~~ (4) For purposes of this section, a plea of guilty or no contest to a violation of
606 Section 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in
607 Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been
608 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

609 ~~[(4)]~~ (5) An interlock restricted driver who operates or is in actual physical control of a
610 vehicle in the state without an ignition interlock system is guilty of a class B misdemeanor.

611 ~~[(5)]~~ (6) It is an affirmative defense to a charge of a violation of Subsection ~~[(4)]~~ (5) if:

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

614 (b) the interlock restricted driver had given written notice to the employer of the

615 interlock restricted driver's interlock restricted status prior to the operation or actual physical
616 control under Subsection [~~(5)(a)~~] (6)(a);

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

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

622 [~~(6)~~] (7) The affirmative defense described in Subsection [~~(5)~~] (6) does not apply to:

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

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

627 [~~(7)~~] (8) (a) An individual with an ignition interlock restriction may petition the
628 division for removal of the restriction if the individual's offense did not involve alcohol.

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

631 [~~(8)~~] (9) (a) (i) An individual with an ignition interlock restriction may petition the
632 division for removal of the restriction if the individual has a medical condition that prohibits
633 the individual from providing a deep lung breath sample.

634 (ii) In support of a petition under Subsection [~~(8)(a)(i)~~] (9)(a)(i), the individual shall
635 provide documentation from a physician that describes the individual's medical condition and
636 whether the individual's medical condition would prohibit the individual from being able to
637 provide a deep breath lung sample.

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

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

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

645 (i) not less than 10 days; or

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

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

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

655 **41-6a-520.1. Refusing a chemical test.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

675 (A) the current conviction; or

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

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

678 (A) a felony conviction; or

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

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

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

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

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

687 (3) As part of any sentence for a conviction of violating this section, the court shall
688 impose the same sentencing as outlined for driving under the influence violations in Section
689 41-6a-505, based on whether this is a first, second, or subsequent conviction, with the
690 following modifications:

691 (a) any jail sentence shall be 24 consecutive hours more than is required under Section
692 41-6a-505;

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

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

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

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

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

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

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

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

708 Section 7. Section 53-3-1007 is amended to read:

709 **53-3-1007. Ignition interlock system provider -- Notification to the division upon**
710 **installation or removal of an ignition interlock system -- Monitoring and reporting**
711 **requirements -- Penalties.**

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

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

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

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

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

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

723 (c) failed to report to the ignition interlock provider for the purpose of monitoring the
724 device every 60 days, or more frequently if ordered by the court as described in Subsection
725 41-6a-518(5)(a).

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

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

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

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

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

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

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

739 another individual:

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

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

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

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

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

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

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

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

756 (b) (i) the division:

757 (A) receives electronic notification from an ignition interlock system provider showing
758 proof of the installation of an ignition interlock system on the individual's vehicle or the
759 vehicle the individual will be operating; or

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

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

767 (7) By following the procedures in Title 63G, Chapter 4, Administrative Procedures
768 Act, the division shall suspend the license of any individual without receiving a record of the
769 individual's conviction of crime seven days after receiving electronic notification from an

770 ignition interlock system provider that an individual has removed an ignition interlock system
771 from the individual's vehicle or a vehicle owned by another individual and operated by the
772 individual if the individual is an interlock restricted driver until:

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

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

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

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

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

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

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

789 (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
790 division shall make rules establishing:

791 (a) procedures for certification and regulation of ignition interlock system providers;

792 (b) acceptable documentation for proof of the installation of an ignition interlock
793 device;

794 (c) procedures for an ignition interlock system provider to electronically notify the
795 division;

796 (d) procedures for an ignition interlock system provider to provide monitoring of an
797 ignition interlock system and reporting the results of monitoring;

798 (e) procedures for the removal of an ignition interlock restriction if the individual is
799 unable to provide a deep lung breath sample as a result of a medical condition and is unable to
800 properly use an ignition interlock system as described in Subsection [41-6a-518.2(8)]

801 [41-6a-518.2\(9\)](#); and

802 (f) policies and procedures for the administration of the ignition interlock system
803 program created under this section.

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

805 **63M-7-404. Purpose -- Duties.**

806 (1) The purpose of the commission is to develop guidelines and propose
807 recommendations to the Legislature, the governor, and the Judicial Council regarding:

808 (a) the sentencing and release of juvenile and adult offenders in order to:

809 (i) respond to public comment;

810 (ii) relate sentencing practices and correctional resources;

811 (iii) increase equity in criminal sentencing;

812 (iv) better define responsibility in criminal sentencing; and

813 (v) enhance the discretion of sentencing judges while preserving the role of the Board
814 of Pardons and Parole and the Youth Parole Authority;

815 (b) the length of supervision of adult offenders on probation or parole in order to:

816 (i) increase equity in criminal supervision lengths;

817 (ii) respond to public comment;

818 (iii) relate the length of supervision to an offender's progress;

819 (iv) take into account an offender's risk of offending again;

820 (v) relate the length of supervision to the amount of time an offender has remained
821 under supervision in the community; and

822 (vi) enhance the discretion of the sentencing judges while preserving the role of the
823 Board of Pardons and Parole; and

824 (c) appropriate, evidence-based probation and parole supervision policies and services
825 that assist individuals in successfully completing supervision and reduce incarceration rates
826 from community supervision programs while ensuring public safety, including:

827 (i) treatment and intervention completion determinations based on individualized case
828 action plans;

829 (ii) measured and consistent processes for addressing violations of conditions of
830 supervision;

831 (iii) processes that include using positive reinforcement to recognize an individual's

832 progress in supervision;

833 (iv) engaging with social services agencies and other stakeholders who provide
834 services that meet offender needs; and

835 (v) identifying community violations that may not warrant revocation of probation or
836 parole.

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

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

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

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

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

850 (i) who have violated one or more conditions of probation; and

851 (ii) whose probation has been revoked by the court.

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

854 (i) the seriousness of any violation of the condition of probation;

855 (ii) the probationer's conduct while on probation; and

856 (iii) the probationer's criminal history.

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

859 (i) who have violated a condition of parole; and

860 (ii) whose parole has been revoked by the Board of Pardons and Parole.

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

- 863 (i) the seriousness of any violation of the condition of parole;
- 864 (ii) the individual's conduct while on parole; and
- 865 (iii) the individual's criminal history.
- 866 (6) The commission shall establish graduated and evidence-based processes to
- 867 facilitate the prompt and effective response to an individual's progress in or violation of the
- 868 terms of probation or parole by the adult probation and parole section of the Department of
- 869 Corrections, or other supervision services provider, to implement the recommendations of the
- 870 State Commission on Criminal and Juvenile Justice for reducing recidivism and incarceration,
- 871 including:
- 872 (a) responses to be used when an individual violates a condition of probation or parole;
- 873 (b) responses to recognize positive behavior and progress related to an individual's case
- 874 action plan;
- 875 (c) when a violation of a condition of probation or parole should be reported to the
- 876 court or the Board of Pardons and Parole; and
- 877 (d) a range of sanctions that may not exceed a period of incarceration of more than:
- 878 (i) three consecutive days; and
- 879 (ii) a total of five days in a period of 30 days.
- 880 (7) The commission shall establish graduated incentives to facilitate a prompt and
- 881 effective response by the adult probation and parole section of the Department of Corrections
- 882 to an offender's:
- 883 (a) compliance with the terms of probation or parole; and
- 884 (b) positive conduct that exceeds those terms.
- 885 (8) (a) The commission shall establish guidelines, including sanctions and incentives,
- 886 to appropriately respond to negative and positive behavior of juveniles who are:
- 887 (i) nonjudicially adjusted;
- 888 (ii) placed on diversion;
- 889 (iii) placed on probation;
- 890 (iv) placed on community supervision;
- 891 (v) placed in an out-of-home placement; or
- 892 (vi) placed in a secure care facility.
- 893 (b) In establishing guidelines under this Subsection (8), the commission shall consider:

- 894 (i) the seriousness of the negative and positive behavior;
- 895 (ii) the juvenile's conduct post-adjudication; and
- 896 (iii) the delinquency history of the juvenile.
- 897 (c) The guidelines shall include:
- 898 (i) responses that are swift and certain;
- 899 (ii) a continuum of community-based options for juveniles living at home;
- 900 (iii) responses that target the individual's criminogenic risk and needs; and
- 901 (iv) incentives for compliance, including earned discharge credits.
- 902 (9) The commission shall establish and maintain supervision length guidelines in
- 903 accordance with this section.
- 904 (10) (a) The commission shall create sentencing guidelines and supervision length
- 905 guidelines for the following financial and property offenses for which a pecuniary loss to a
- 906 victim may exceed \$50,000:
- 907 (i) securities fraud, Sections 61-1-1 and 61-1-21;
- 908 (ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment
- 909 adviser representative, Sections 61-1-3 and 61-1-21;
- 910 (iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;
- 911 (iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1,
- 912 Assault and Related Offenses;
- 913 (v) arson, Section 76-6-102;
- 914 (vi) burglary, Section 76-6-202;
- 915 (vii) theft under Title 76, Chapter 6, Part 4, Theft;
- 916 (viii) forgery, Section 76-6-501;
- 917 (ix) unlawful dealing of property by a fiduciary, Section 76-6-513;
- 918 (x) insurance fraud, Section 76-6-521;
- 919 (xi) computer crimes, Section 76-6-703;
- 920 (xii) mortgage fraud, Section 76-6-1203;
- 921 (xiii) pattern of unlawful activity, Sections 76-10-1603 and 76-10-1603.5;
- 922 (xiv) communications fraud, Section 76-10-1801;
- 923 (xv) money laundering, Section 76-10-1904; and
- 924 (xvi) other offenses in the discretion of the commission.

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

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

929 (11) (a) Before January 1, 2023, the commission shall study the offenses of sexual
930 exploitation of a minor and aggravated sexual exploitation of a minor under Sections
931 [76-5b-201](#) and [76-5b-201.1](#).

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

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

937 (i) negligently operating a vehicle resulting in injury, Section [76-5-102.1](#); and

938 (ii) negligently operating a vehicle resulting in death, Section [76-5-207](#).

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

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

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

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

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

952 Section 9. Section [76-5-102.1](#) is amended to read:

953 **[76-5-102.1. Negligently operating a vehicle resulting in injury.](#)**

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

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

956 (ii) "Drug" means the same as that term is defined in Section 76-5-207.
957 (iii) "Negligent" or "negligence" means the same as that term is defined in Section
958 76-5-207.
959 (iv) "Vehicle" means the same as that term is defined in Section 41-6a-501.
960 (b) Terms defined in Section 76-1-101.5 apply to this section.
961 (2) An actor commits negligently operating a vehicle resulting in injury if the actor:
962 (a) (i) operates a vehicle in a negligent manner causing bodily injury to another; and
963 (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test
964 shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the
965 time of the test;
966 (B) is under the influence of alcohol, a drug, or the combined influence of alcohol and
967 a drug to a degree that renders the actor incapable of safely operating a vehicle; or
968 (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of
969 operation; or
970 (b) (i) operates a vehicle in a criminally negligent manner causing bodily injury to
971 another; and
972 (ii) has in the actor's body any measurable amount of a controlled substance.
973 (3) Except as provided in Subsection (4), a violation of Subsection (2) is:
974 [~~(a) (i) a class A misdemeanor; or~~]
975 [~~(ii) a third degree felony if the bodily injury is serious bodily injury; and~~]
976 (a) (i) a class A misdemeanor; or
977 (ii) a third degree felony if the actor has two or more driving under the influence
978 related convictions under Subsection 41-6a-501(2)(a), each of which is within 10 years of:
979 (A) the current conviction; or
980 (B) the commission of the offense upon which the current conviction is based;
981 (iii) a third degree felony, if the current conviction is at any time after the conviction
982 of:
983 (A) a felony conviction; or
984 (B) any conviction described in Subsection (3)(a)(iii)(A) for which judgment of
985 conviction is reduced under Section 76-3-402; or
986 (iv) a third degree felony if the bodily injury is serious bodily injury; and

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

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

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

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

996 (c) the actor possessed, in the actor's body, a controlled substance listed in Section
997 [58-37-4.2](#) if:

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

1000 (ii) the substance was administered to the actor by the medical researcher.

1001 (5) (a) A judge imposing a sentence under this section may consider:

1002 (i) the sentencing guidelines developed in accordance with Section [63M-7-404](#);

1003 (ii) the defendant's history;

1004 (iii) the facts of the case;

1005 (iv) aggravating and mitigating factors; or

1006 (v) any other relevant fact.

1007 ~~[(b) The judge may not impose a lesser sentence than would be required for a~~
1008 ~~conviction based on the defendant's history under Section [41-6a-505](#).]~~

1009 ~~[(e)]~~ (b) The standards for chemical breath analysis under Section [41-6a-515](#) and the
1010 provisions for the admissibility of chemical test results under Section [41-6a-516](#) apply to
1011 determination and proof of blood alcohol content under this section.

1012 ~~[(d)]~~ (c) A calculation of blood or breath alcohol concentration under this section shall
1013 be made in accordance with Subsection [41-6a-502](#)(3).

1014 ~~[(e)]~~ (d) Except as provided in Subsection (4), the fact that an actor charged with
1015 violating this section is or has been legally entitled to use alcohol or a drug is not a defense.

1016 ~~[(f)]~~ (e) Evidence of a defendant's blood or breath alcohol content or drug content is
1017 admissible except if prohibited by the Utah Rules of Evidence, the United States Constitution,

1018 or the Utah Constitution.

1019 ~~[(g)]~~ (f) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an
1020 offense described in this section may not be held in abeyance.

1021 Section 10. Section 77-20-201 is amended to read:

1022 **77-20-201. Right to bail -- Capital felony.**

1023 (1) An individual charged with, or arrested for, a criminal offense shall be admitted to
1024 bail as a matter of right, except if the individual is charged with:

1025 (a) a capital felony when there is substantial evidence to support the charge;

1026 (b) a felony committed while on parole or on probation for a felony conviction, or
1027 while free on bail awaiting trial on a previous felony charge, when there is substantial evidence
1028 to support the current felony charge;

1029 (c) a felony when there is substantial evidence to support the charge and the court
1030 finds, by clear and convincing evidence, that:

1031 (i) the individual would constitute a substantial danger to any other individual or to the
1032 community after considering available conditions of release that the court may impose if the
1033 individual is released on bail; or

1034 (ii) the individual is likely to flee the jurisdiction of the court if the individual is
1035 released on bail;

1036 (d) a felony when there is substantial evidence to support the charge and the court
1037 finds, by clear and convincing evidence, that the individual violated a material condition of
1038 release while previously on bail;

1039 (e) a domestic violence offense if:

1040 (i) there is substantial evidence to support the charge; and

1041 (ii) the court finds, by clear and convincing evidence, that the individual would
1042 constitute a substantial danger to an alleged victim of domestic violence after considering
1043 available conditions of release that the court may impose if the individual is released on bail;

1044 (f) the offense of driving under the influence or driving with a measurable controlled
1045 substance in the body if:

1046 (i) the offense results in death or serious bodily injury to an individual;

1047 (ii) there is substantial evidence to support the charge; and

1048 (iii) the court finds, by clear and convincing evidence, that the individual would

1049 constitute a substantial danger to the community after considering available conditions of
1050 release that the court may impose if the individual is released on bail; [or]

1051 (g) a felony violation of Section 76-9-101 if:

1052 (i) there is substantial evidence to support the charge; and

1053 (ii) the court finds, by clear and convincing evidence, that the individual is not likely to
1054 appear for a subsequent court appearance[-]; or

1055 (h) except as provided in Subsection (4), the offense of driving under the influence or
1056 driving with a measurable controlled substance in the body:

1057 (i) if committed while on parole or on probation for a driving under the influence or
1058 driving with a measurable controlled substance in the body conviction; or

1059 (ii) while the individual is out of custody awaiting trial on a previous driving under the
1060 influence or driving with a measurable controlled substance in the body charge, when the court
1061 finds there is substantial evidence to support the current charge.

1062 (2) Notwithstanding any other provision of this section, there is a rebuttable
1063 presumption that an individual is a substantial danger to the community under Subsection
1064 (1)(f)(iii):

1065 (a) as long as the individual has a blood or breath alcohol concentration of .05 grams or
1066 greater if the individual is arrested for, or charged with, the offense of driving under the
1067 influence and the offense resulted in death or serious bodily injury to an individual; or

1068 (b) if the individual has a measurable amount of controlled substance in the
1069 individual's body, the individual is arrested for, or charged with, the offense of driving with a
1070 measurable controlled substance in the body and the offense resulted in death or serious bodily
1071 injury to an individual.

1072 (3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section
1073 76-5-202, aggravated murder, is a capital felony unless:

1074 (a) the prosecuting attorney files a notice of intent to not seek the death penalty; or

1075 (b) the time for filing a notice to seek the death penalty has expired and the prosecuting
1076 attorney has not filed a notice to seek the death penalty.

1077 (4) For purposes of Subsection (1)(h), there is a rebuttable presumption that an
1078 individual would not constitute a substantial danger to any other person or the community if:

1079 (a) the court orders the person to participate in an inpatient drug and alcohol treatment

1080 program; or

1081 (b) the court orders the person to participate in home confinement through the use of
1082 electronic monitoring as described in Section [41-6a-506](#).

1083 Section 11. Section **77-40a-303** is amended to read:

1084 **77-40a-303. Requirements for a certificate of eligibility to expunge records of a**
1085 **conviction.**

1086 (1) Except as otherwise provided by this section, a petitioner is eligible to receive a
1087 certificate of eligibility from the bureau to expunge the records of a conviction if:

1088 (a) the petitioner has paid in full all fines and interest ordered by the court related to the
1089 conviction for which expungement is sought;

1090 (b) the petitioner has paid in full all restitution ordered by the court under Section
1091 [77-38b-205](#); and

1092 (c) the following time periods have passed after the day on which the petitioner was
1093 convicted or released from incarceration, parole, or probation, whichever occurred last, for the
1094 conviction that the petitioner seeks to expunge:

1095 (i) 10 years for the conviction of a misdemeanor under Subsection [41-6a-501\(2\)](#);

1096 (ii) 10 years for the conviction of a felony for operating a motor vehicle with any
1097 amount of a controlled substance in an individual's body and causing serious bodily injury or
1098 death, as codified before May 4, 2022, Laws of Utah 2021,

1099 Chapter 236, Section 1, Subsection [58-37-8\(2\)\(g\)](#);

1100 (iii) seven years for the conviction of a felony;

1101 (iv) five years for the conviction of a drug possession offense that is a felony;

1102 (v) five years for the conviction of a class A misdemeanor;

1103 (vi) four years for the conviction of a class B misdemeanor; or

1104 (vii) three years for the conviction of a class C misdemeanor or infraction.

1105 (2) A petitioner is not eligible to receive a certificate of eligibility from the bureau to
1106 expunge the records of a conviction under Subsection (1) if:

1107 (a) except as provided in Subsection (3), the conviction for which expungement is
1108 sought is:

1109 (i) a capital felony;

1110 (ii) a first degree felony;

- 1111 (iii) a felony conviction of a violent felony as defined in Subsection
1112 [76-3-203.5\(1\)\(c\)\(i\)](#);
- 1113 (iv) (A) a felony conviction described in Subsection [41-6a-501\(2\)](#); or
1114 (B) any conviction described in Subsection (2)(a)(iv)(A) for which judgment of
1115 conviction is reduced under Section [76-3-402](#);
- 1116 (v) an offense, or a combination of offenses, that would require the individual to
1117 register as a sex offender, as defined in Section [77-41-102](#); or
- 1118 (vi) a registerable child abuse offense as defined in Subsection [77-43-102\(2\)](#);
- 1119 (b) there is a criminal proceeding for a misdemeanor or felony offense pending against
1120 the petitioner, unless the criminal proceeding is for a traffic offense;
- 1121 (c) there is a plea in abeyance for a misdemeanor or felony offense pending against the
1122 petitioner, unless the plea in abeyance is for a traffic offense;
- 1123 (d) the petitioner is currently incarcerated, on parole, or on probation, unless the
1124 petitioner is on probation or parole for an infraction, a traffic offense, or a minor regulatory
1125 offense;
- 1126 (e) the petitioner intentionally or knowingly provides false or misleading information
1127 on the application for a certificate of eligibility;
- 1128 (f) there is a criminal protective order or a criminal stalking injunction in effect for the
1129 case; or
- 1130 (g) the bureau determines that the petitioner's criminal history makes the petitioner
1131 ineligible for a certificate of eligibility under Subsection (4) or (5).
- 1132 (3) Subsection (2)(a) does not apply to a conviction for a qualifying sexual offense, as
1133 defined in Section [76-3-209](#), if, at the time of the offense, a petitioner who committed the
1134 offense was at least 14 years old but under 18 years old, unless the petitioner was convicted by
1135 a district court as an adult in accordance with Title 80, Chapter 6, Part 5, Transfer to District
1136 Court.
- 1137 (4) Subject to Subsections (6), (7), and (8), a petitioner is not eligible to receive a
1138 certificate of eligibility if, at the time the petitioner seeks the certificate of eligibility, the
1139 bureau determines that the petitioner's criminal history, including previously expunged
1140 convictions, contains any of the following:
- 1141 (a) two or more felony convictions other than for drug possession offenses, each of

1142 which is contained in a separate criminal episode;

1143 (b) any combination of three or more convictions other than for drug possession
1144 offenses that include two class A misdemeanor convictions, each of which is contained in a
1145 separate criminal episode;

1146 (c) any combination of four or more convictions other than for drug possession
1147 offenses that include three class B misdemeanor convictions, each of which is contained in a
1148 separate criminal episode; or

1149 (d) five or more convictions other than for drug possession offenses of any degree
1150 whether misdemeanor or felony, each of which is contained in a separate criminal episode.

1151 (5) Subject to Subsections (7) and (8), a petitioner is not eligible to receive a certificate
1152 of eligibility if, at the time the petitioner seeks the certificate of eligibility, the bureau
1153 determines that the petitioner's criminal history, including previously expunged convictions,
1154 contains any of the following:

1155 (a) three or more felony convictions for drug possession offenses, each of which is
1156 contained in a separate criminal episode; or

1157 (b) any combination of five or more convictions for drug possession offenses, each of
1158 which is contained in a separate criminal episode.

1159 (6) If the petitioner's criminal history contains convictions for both a drug possession
1160 offense and a non-drug possession offense arising from the same criminal episode, the bureau
1161 shall count that criminal episode as a conviction under Subsection (4) if any non-drug
1162 possession offense in that episode:

1163 (a) is a felony or class A misdemeanor; or

1164 (b) has the same or a longer waiting period under Subsection (1)(c) than any drug
1165 possession offense in that episode.

1166 (7) Except as provided in Subsection (8), if at least 10 years have passed after the day
1167 on which the petitioner was convicted or released from incarceration, parole, or probation,
1168 whichever occurred last, for all convictions:

1169 (a) each numerical eligibility limit under Subsections (4)(a) and (b) shall be increased
1170 by one; and

1171 (b) each numerical eligibility limit under Subsections (4)(c) and (d) is not applicable if
1172 the highest level of convicted offense in the criminal episode is:

- 1173 (i) a class B misdemeanor;
- 1174 (ii) a class C misdemeanor;
- 1175 (iii) a drug possession offense if none of the non-drug possession offenses in the
- 1176 criminal episode are a felony or a class A misdemeanor; or
- 1177 (iv) an infraction.
- 1178 (8) When determining whether a petitioner is eligible for a certificate of eligibility
- 1179 under Subsection (4), (5), or (7), the bureau may not consider a petitioner's pending case or
- 1180 prior conviction for:
- 1181 (a) an infraction;
- 1182 (b) a traffic offense;
- 1183 (c) a minor regulatory offense; or
- 1184 (d) a clean slate eligible case that was automatically expunged in accordance with
- 1185 Section [77-40a-201](#).
- 1186 (9) If the petitioner received a pardon before May 14, 2013, from the Utah Board of
- 1187 Pardons and Parole, the petitioner is entitled to an expungement order for all pardoned crimes
- 1188 in accordance with Section [77-27-5.1](#).
- 1189 **Section 12. Effective date.**
- 1190 This bill takes effect on July 1, 2024.