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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, sentencing, and pretrial detention.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ 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;
- ▶ amends provisions related to sentences for certain individuals with prior convictions for driving under the influence who violate ignition interlock requirements;
- ▶ allows an ignition interlock restricted driver to petition the Driver License Division for removal of the restriction in certain circumstances if certain conditions are met;
- ▶ clarifies that an ignition interlock restriction period begins on the date of installation of the ignition interlock system;
- ▶ clarifies that the prohibition on operating a motor vehicle without an ignition interlock system installed on the vehicle begins on the date of conviction, not the date of installation of the ignition interlock system;

- 28 ▶ amends penalties for subsequent offenses related to refusal of a chemical test or
 29 negligent operation of a vehicle that results in injury;
- 30 ▶ requires the Sentencing Commission to amend sentencing guidelines for certain offenses
 31 related to ignition interlock restricted drivers and of negligent operation of a vehicle that
 32 results in injury when there is evidence that the individual was also driving under the influence;
- 33 ▶ amends provisions related to pretrial detention of an individual arrested for driving
 34 under the influence with another case pending or while on probation for a previous offense of
 35 driving under the influence;
- 36 ▶ requires pretrial detention or electronic monitoring for an individual that is arrested for
 37 driving under the influence while already on probation for or while another case is pending for
 38 driving under the influence; and
- 39 ▶ makes technical changes.

40 **Money Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 This bill provides a special effective date.

44 This bill provides a coordination clause.

45 **Utah Code Sections Affected:**

46 AMENDS:

- 47 **41-6a-501**, as last amended by Laws of Utah 2023, Chapters 328, 415
- 48 **41-6a-502**, as last amended by Laws of Utah 2023, Chapter 415
- 49 **41-6a-502.5**, as last amended by Laws of Utah 2023, Chapter 328
- 50 **41-6a-505**, as last amended by Laws of Utah 2023, Chapters 328, 415
- 51 **41-6a-515.5**, as last amended by Laws of Utah 2021, Chapter 83
- 52 **41-6a-518.2**, as last amended by Laws of Utah 2023, Chapters 384, 415
- 53 **41-6a-520.1**, as enacted by Laws of Utah 2023, Chapter 415
- 54 **53-3-1007**, as last amended by Laws of Utah 2023, Chapter 384
- 55 **63M-7-404**, as last amended by Laws of Utah 2023, Chapter 111
- 56 **76-5-102.1**, as last amended by Laws of Utah 2023, Chapters 111, 415
- 57 **77-20-201**, as last amended by Laws of Utah 2023, Chapter 408

58 **Utah Code Sections affected by Coordination Clause:**

59 **63M-7-404.3**, Utah Code Annotated 1953

60

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

62 Section 1. Section **41-6a-501** is amended to read:

63 **41-6a-501 . Definitions.**

64 (1) As used in this part:

65 (a) "Actual physical control" is determined by a consideration of the totality of the
66 circumstances, but does not include a circumstance in which:

67 (i) the person is asleep inside the vehicle;

68 (ii) the person is not in the driver's seat of the vehicle;

69 (iii) the engine of the vehicle is not running;

70 (iv) the vehicle is lawfully parked; and

71 (v) under the facts presented, it is evident that the person did not drive the vehicle to
72 the location while under the influence of alcohol, a drug, or the combined
73 influence of alcohol and any drug.

74 (b) "Assessment" means an in-depth clinical interview with a licensed mental health
75 therapist:

76 (i) used to determine if a person is in need of:

77 (A) substance abuse treatment that is obtained at a substance abuse program;

78 (B) an educational series; or

79 (C) a combination of Subsections (1)(b)(i)(A) and (B); and

80 (ii) that is approved by the Division of Integrated Healthcare in accordance with
81 Section 26B-5-104.

82 (c) "Driving under the influence court" means a court that is approved as a driving under
83 the influence court by the Judicial Council according to standards established by the
84 Judicial Council.

85 (d) "Drug" or "drugs" means:

86 (i) a controlled substance as defined in Section 58-37-2;

87 (ii) a drug as defined in Section 58-17b-102; or

88 (iii) a substance that, when knowingly, intentionally, or recklessly taken into the
89 human body, can impair the ability of a person to safely operate a motor vehicle.

90 (e) "Educational series" means an educational series obtained at a substance abuse
91 program that is approved by the Division of Integrated Healthcare in accordance with
92 Section 26B-5-104.

93 (f) "Extreme DUI" means an offense of driving under the influence under Section
94 41-1a-502 where there is admissible evidence that the individual:

95 (i) had a blood or breath alcohol level of .16 or higher;

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

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

100 (A) recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid
101 Research and Medical Cannabis; or

102 (B) prescribed.

103 [~~(f)~~] (g) "Negligence" means simple negligence, the failure to exercise that degree of care
104 that an ordinarily reasonable and prudent person exercises under like or similar
105 circumstances.

106 [~~(g)~~] (h) "Novice learner driver" means an individual who:

107 (i) has applied for a Utah driver license;

108 (ii) has not previously held a driver license in this state or another state; and

109 (iii) has not completed the requirements for issuance of a Utah driver license.

110 [~~(h)~~] (i) "Screening" means a preliminary appraisal of a person:

111 (i) used to determine if the person is in need of:

112 (A) an assessment; or

113 (B) an educational series; and

114 (ii) that is approved by the Division of Integrated Healthcare in accordance with
115 Section 26B-5-104.

116 [~~(i)~~] (j) "Serious bodily injury" means bodily injury that creates or causes:

117 (i) serious permanent disfigurement;

118 (ii) protracted loss or impairment of the function of any bodily member or organ; or

119 (iii) a substantial risk of death.

120 [~~(j)~~] (k) "Substance abuse treatment" means treatment obtained at a substance abuse

121 program that is approved by the Division of Integrated Healthcare in accordance with
122 Section 26B-5-104.

123 [~~(k)~~] (l) "Substance abuse treatment program" means a state licensed substance abuse
124 program.

125 [~~(l)~~] (m) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined
126 in Section 41-6a-102; and

127 (ii) "Vehicle" or "motor vehicle" includes:

128 (A) an off-highway vehicle as defined under Section 41-22-2; and

129 (B) a motorboat as defined in Section 73-18-2.

- 130 (2) As used in Sections 41-6a-502 and 41-6a-520.1:
- 131 (a) "Conviction" means any conviction arising from a separate episode of driving for a
132 violation of:
- 133 (i) driving under the influence under Section 41-6a-502;
- 134 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a
135 combination of both-related reckless driving under Sections 41-6a-512 and
136 41-6a-528; or
137 (B) for an offense committed on or after July 1, 2008, impaired driving under
138 Section 41-6a-502.5;
- 139 (iii) driving with any measurable controlled substance that is taken illegally in the
140 body under Section 41-6a-517;
- 141 (iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a
142 combination of both-related reckless driving, or impaired driving under Section
143 41-6a-502.5 adopted in compliance with Section 41-6a-510;
- 144 (v) Section 76-5-207;
- 145 (vi) operating a motor vehicle with any amount of a controlled substance in an
146 individual's body and causing serious bodily injury or death, as codified before
147 May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8
148 (2)(g);
- 149 (vii) negligently operating a vehicle resulting in injury under Section 76-5-102.1;
- 150 (viii) a violation described in Subsections (2)(a)(i) through (vii), which judgment of
151 conviction is reduced under Section 76-3-402;
- 152 (ix) refusal of a chemical test under Subsection 41-6a-520.1(1); or
- 153 (x) statutes or ordinances previously in effect in this state or in effect in any other
154 state, the United States, or any district, possession, or territory of the United States
155 which would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a
156 combination of both-related reckless driving if committed in this state, including
157 punishments administered under 10 U.S.C. Sec. 815.
- 158 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)
159 through (x) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in
160 Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge
161 has been subsequently reduced or dismissed in accordance with the plea in abeyance
162 agreement, for purposes of:
- 163 (i) enhancement of penalties under this part; and

- 164 (ii) expungement under Title 77, Chapter 40a, Expungement.
- 165 (c) An admission to a violation of Section 41-6a-502 in juvenile court is the equivalent
- 166 of a conviction even if the charge has been subsequently dismissed in accordance
- 167 with the Utah Rules of Juvenile Procedure for the purposes of enhancement of
- 168 penalties under:
- 169 (i) this part;
- 170 (ii) negligently operating a vehicle resulting in injury under Section 76-5-102.1; and
- 171 (iii) negligently operating a vehicle resulting in death under Section 76-5-207.

172 (3) As used in Section 41-6a-505, "controlled substance" does not include an inactive

173 metabolite of a controlled substance.

174 Section 2. Section **41-6a-502** is amended to read:

175 **41-6a-502 . Driving under the influence of alcohol, drugs, or a combination of**

176 **both or with specified or unsafe blood alcohol concentration -- Penalties --**

177 **Reporting of convictions.**

- 178 (1) An actor commits driving under the influence if the actor operates or is in actual
- 179 physical control of a vehicle within this state if the actor:
- 180 (a) has sufficient alcohol in the actor's body that a subsequent chemical test shows that
- 181 the actor has a blood or breath alcohol concentration of .05 grams or greater at the
- 182 time of the test;
- 183 (b) is under the influence of alcohol, any drug, or the combined influence of alcohol and
- 184 any drug to a degree that renders the actor incapable of safely operating a vehicle; or
- 185 (c) has a blood or breath alcohol concentration of .05 grams or greater at the time of
- 186 operation or actual physical control.
- 187 (2) (a) A violation of Subsection (1) is a class B misdemeanor.
- 188 (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A
- 189 misdemeanor if the actor:
- 190 (i) has a passenger younger than 16 years old in the vehicle at the time of the offense;
- 191 (ii) is 21 years old or older and has a passenger younger than 18 years old in the
- 192 vehicle at the time of the offense;
- 193 (iii) ~~[the actor]~~ at the time of the offense, also violated[-] :
- 194 (A) Section 41-6a-712 or 41-6a-714 [at the time of the offense]; or
- 195 (B) Section 41-6a-709, if the violation occurs on a one-way highway, other than a
- 196 roundabout, that has more than one lane of traffic; or
- 197 (iv) has one prior conviction within 10 years of:

- 198 (A) the current conviction under Subsection (1); or
 199 (B) the commission of the offense upon which the current conviction is based.
- 200 (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree
 201 felony if:
- 202 (i) the actor has two or more prior convictions each of which is within 10 years of:
 203 (A) the current conviction; or
 204 (B) the commission of the offense upon which the current conviction is based; or
 205 (ii) the current conviction is at any time after:
 206 (A) a felony conviction; or
 207 (B) any conviction described in Subsection (2)(c)(ii)(A) for which judgment of
 208 conviction is reduced under Section 76-3-402.
 209 [~~(ii) the current conviction is at any time after a conviction of:]~~
 210 [~~(A) a violation of Section 76-5-207;~~]
 211 [~~(B) a felony violation of this section, Section 76-5-102.1, 41-6a-520.1, or a statute~~
 212 ~~previously in effect in this state that would constitute a violation of this section; or]~~
 213 [~~(C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of~~
 214 ~~conviction is reduced under Section 76-3-402.]~~
- 215 (3) Alcohol concentration in the blood shall be based upon grams of alcohol per 100
 216 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of
 217 alcohol per 210 liters of breath.
- 218 (4) A violation of this section includes a violation under a local ordinance similar to this
 219 section adopted in compliance with Section 41-6a-510.
- 220 (5) A court shall, monthly, send to the Division of Professional Licensing, created in
 221 Section 58-1-103, a report containing the name, case number, and, if known, the date of
 222 birth of each person convicted during the preceding month of a violation of this section
 223 for whom there is evidence that the person was driving under the influence, in whole or
 224 in part, of a prescribed controlled substance.
- 225 (6) An offense described in this section is a strict liability offense.
- 226 (7) A guilty or no contest plea to an offense described in this section may not be held in
 227 abeyance.
- 228 (8) An actor is guilty of a separate offense under Subsection (1) for each passenger in the
 229 vehicle that is younger than 16 years old at the time of the offense.

230 Section 3. Section **41-6a-502.5** is amended to read:

231 **41-6a-502.5 . Impaired driving -- Penalty -- Reporting of convictions --**

232 **Sentencing requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

264 (b) The court shall render the same order regarding screening, assessment, an
265 educational series, or substance abuse treatment in connection with a first, second, or

266 subsequent conviction under this section as the court would render in connection with
 267 applying respectively, the first, second, or subsequent conviction requirements of
 268 Subsections 41-6a-505(1), (3), (5), and (7).

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

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

274 (i) a CDL license holder; or

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

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

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

279 (b) to a person charged with extreme DUI.

280 [~~(b) where there is admissible evidence that the individual:~~]

281 [~~(i) had a blood or breath alcohol level of .16 or higher;~~]

282 [~~(ii) had a blood or breath alcohol level of .05 or higher in addition to any measurable
 283 controlled substance; or]~~

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

286 [~~(A) prescribed by a licensed physician; or]~~

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

289 Section 4. Section **41-6a-505** is amended to read:

290 **41-6a-505 . Sentencing requirements for driving under the influence of alcohol,
 291 drugs, or a combination of both violations.**

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

298 (a) the court shall:

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

- 300 (B) impose a jail sentence of not less than two days in addition to home
301 confinement of not fewer than 30 consecutive days through the use of
302 electronic monitoring that includes a substance abuse testing instrument in
303 accordance with Section 41-6a-506;
- 304 (ii) order the individual to participate in a screening;
- 305 (iii) order the individual to participate in an assessment, if it is found appropriate by a
306 screening under Subsection (1)(a)(ii);
- 307 (iv) order the individual to participate in an educational series if the court does not
308 order substance abuse treatment as described under Subsection (1)(b);
- 309 (v) impose a fine of not less than \$700;
- 310 (vi) order probation for the individual in accordance with Section 41-6a-507;
- 311 (vii) (A) order the individual to pay the administrative impound fee described in
312 Section 41-6a-1406; or
313 (B) if the administrative impound fee was paid by a party described in Subsection
314 41-6a-1406(5)(a), other than the individual sentenced, order the individual
315 sentenced to reimburse the party;
- 316 (viii) (A) order the individual to pay the towing and storage fees described in
317 Section 72-9-603; or
318 (B) if the towing and storage fees were paid by a party described in Subsection
319 41-6a-1406(5)(a), other than the individual sentenced, order the individual
320 sentenced to reimburse the party; or
- 321 (ix) unless the court determines and states on the record that an ignition interlock
322 system is not necessary for the safety of the community and in the best interest of
323 justice, order the installation of an ignition interlock system as described in
324 Section 41-6a-518; and
- 325 (b) the court may:
- 326 (i) order the individual to obtain substance abuse treatment if the substance abuse
327 treatment program determines that substance abuse treatment is appropriate;
- 328 (ii) order the individual to participate in a ~~[24/7]~~ 24-7 sobriety program as defined in
329 Section 41-6a-515.5 if the individual is 21 years old or older; or
- 330 (iii) order a combination of Subsections (1)(b)(i) and (ii).
- 331 (2) (a) If an individual described in Subsection (1) is participating in a ~~[24/7]~~ 24-7
332 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail
333 sentence imposed under Subsection (1)(a).

- 334 (b) If an individual described in Subsection (1) fails to successfully complete all of the
335 requirements of the [~~24/7~~] 24-7 sobriety program, the court shall impose the
336 suspended jail sentence described in Subsection (2)(a).
- 337 (3) As part of any sentence for any first conviction of Section 41-6a-502 not described in
338 Subsection (1):
- 339 (a) the court shall:
- 340 (i) (A) impose a jail sentence of not less than two days; or
341 (B) require the individual to work in a compensatory-service work program for
342 not less than 48 hours;
- 343 (ii) order the individual to participate in a screening;
- 344 (iii) order the individual to participate in an assessment, if it is found appropriate by a
345 screening under Subsection (3)(a)(ii);
- 346 (iv) order the individual to participate in an educational series if the court does not
347 order substance abuse treatment as described under Subsection (3)(b);
- 348 (v) impose a fine of not less than \$700;
- 349 (vi) (A) order the individual to pay the administrative impound fee described in
350 Section 41-6a-1406; or
351 (B) if the administrative impound fee was paid by a party described in Subsection
352 41-6a-1406(5)(a), other than the individual sentenced, order the individual
353 sentenced to reimburse the party; or
- 354 (vii) (A) order the individual to pay the towing and storage fees described in
355 Section 72-9-603; or
356 (B) if the towing and storage fees were paid by a party described in Subsection
357 41-6a-1406(5)(a), other than the individual sentenced, order the individual
358 sentenced to reimburse the party; and
- 359 (b) the court may:
- 360 (i) order the individual to obtain substance abuse treatment if the substance abuse
361 treatment program determines that substance abuse treatment is appropriate;
- 362 (ii) order probation for the individual in accordance with Section 41-6a-507;
- 363 (iii) order the individual to participate in a [~~24/7~~] 24-7 sobriety program as defined in
364 Section 41-6a-515.5 if the individual is 21 years old or older; or
- 365 (iv) order a combination of Subsections (3)(b)(i) through (iii).
- 366 (4) (a) If an individual described in Subsection (3) is participating in a [~~24/7~~] 24-7
367 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail

- 368 sentence imposed under Subsection (3)(a).
- 369 (b) If an individual described in Subsection (4)(a) fails to successfully complete all of
370 the requirements of the ~~[24/7]~~ 24-7 sobriety program, the court shall impose the
371 suspended jail sentence described in Subsection (4)(a).
- 372 (5) If an individual has a prior conviction as defined in Section 41-6a-501 that is within 10
373 years of the current conviction under Section 41-6a-502 or the commission of the
374 offense upon which the current conviction ~~[is] [based and where there is admissible~~
375 ~~evidence that the individual had a blood or breath alcohol level of .16 or higher, had a~~
376 ~~blood or breath alcohol level of .05 or higher in addition to any measurable controlled~~
377 ~~substance, or had a combination of two or more controlled substances in the individual's~~
378 ~~body that were not recommended in accordance with Title 26B, Chapter 4, Part 2,~~
379 ~~Cannabinoid Research and Medical Cannabis, or prescribed]~~ amounts to extreme DUI:
- 380 (a) the court shall:
- 381 (i) (A) impose a jail sentence of not less than 20 days;
- 382 (B) impose a jail sentence of not less than 10 days in addition to home
383 confinement of not fewer than 60 consecutive days through the use of
384 electronic monitoring that includes a substance abuse testing instrument in
385 accordance with Section 41-6a-506; or
- 386 (C) impose a jail sentence of not less than 10 days in addition to ordering the
387 individual to obtain substance abuse treatment, if the court finds that substance
388 abuse treatment is more likely to reduce recidivism and is in the interests of
389 public safety;
- 390 (ii) order the individual to participate in a screening;
- 391 (iii) order the individual to participate in an assessment, if it is found appropriate by a
392 screening under Subsection (5)(a)(ii);
- 393 (iv) order the individual to participate in an educational series if the court does not
394 order substance abuse treatment as described under Subsection (5)(b);
- 395 (v) impose a fine of not less than \$800;
- 396 (vi) order probation for the individual in accordance with Section 41-6a-507;
- 397 (vii) order the installation of an ignition interlock system as described in Section
398 41-6a-518;
- 399 (viii) (A) order the individual to pay the administrative impound fee described in
400 Section 41-6a-1406; or
- 401 (B) if the administrative impound fee was paid by a party described in Subsection

- 402 41-6a-1406(5)(a), other than the individual sentenced, order the individual
403 sentenced to reimburse the party; or
- 404 (ix) (A) order the individual to pay the towing and storage fees described in
405 Section 72-9-603; or
- 406 (B) if the towing and storage fees were paid by a party described in Subsection
407 41-6a-1406(5)(a), other than the individual sentenced, order the individual
408 sentenced to reimburse the party; and
- 409 (b) the court may:
- 410 (i) order the individual to obtain substance abuse treatment if the substance abuse
411 treatment program determines that substance abuse treatment is appropriate;
- 412 (ii) order the individual to participate in a [~~24-7~~] 24-7 sobriety program as defined in
413 Section 41-6a-515.5 if the individual is 21 years old or older; or
- 414 (iii) order a combination of Subsections (5)(b)(i) and (ii).
- 415 (6) (a) If an individual described in Subsection (5) is participating in a [~~24-7~~] 24-7
416 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail
417 sentence imposed under Subsection (5)(a) after the individual has served a minimum
418 of:
- 419 (i) five days of the jail sentence for a second offense; or
- 420 (ii) 10 days of the jail sentence for a third or subsequent offense.
- 421 (b) If an individual described in Subsection (6)(a) fails to successfully complete all of
422 the requirements of the [~~24-7~~] 24-7 sobriety program, the court shall impose the
423 suspended jail sentence described in Subsection (6)(a).
- 424 (7) If an individual has a prior conviction as defined in Section 41-6a-501 that is within 10
425 years of the current conviction under Section 41-6a-502 or the commission of the
426 offense upon which the current conviction is based and that does not qualify under
427 Subsection (5):
- 428 (a) the court shall:
- 429 (i) (A) impose a jail sentence of not less than 10 days; or
- 430 (B) impose a jail sentence of not less than 5 days in addition to home confinement
431 of not fewer than 30 consecutive days through the use of electronic monitoring
432 that includes a substance abuse testing instrument in accordance with Section
433 41-6a-506;
- 434 (ii) order the individual to participate in a screening;
- 435 (iii) order the individual to participate in an assessment, if it is found appropriate by a

- 436 screening under Subsection (7)(a)(ii);
- 437 (iv) order the individual to participate in an educational series if the court does not
- 438 order substance abuse treatment as described under Subsection (7)(b);
- 439 (v) impose a fine of not less than \$800;
- 440 (vi) order probation for the individual in accordance with Section 41-6a-507;
- 441 (vii) (A) order the individual to pay the administrative impound fee described in
- 442 Section 41-6a-1406; or
- 443 (B) if the administrative impound fee was paid by a party described in Subsection
- 444 41-6a-1406(5)(a), other than the individual sentenced, order the individual
- 445 sentenced to reimburse the party; or
- 446 (viii) (A) order the individual to pay the towing and storage fees described in
- 447 Section 72-9-603; or
- 448 (B) if the towing and storage fees were paid by a party described in Subsection
- 449 41-6a-1406(5)(a), other than the individual sentenced, order the individual
- 450 sentenced to reimburse the party; and
- 451 (b) the court may:
- 452 (i) order the individual to obtain substance abuse treatment if the substance abuse
- 453 treatment program determines that substance abuse treatment is appropriate;
- 454 (ii) order the individual to participate in a [24/7] 24-7 sobriety program as defined in
- 455 Section 41-6a-515.5 if the individual is 21 years old or older; or
- 456 (iii) order a combination of Subsections (7)(b)(i) and (ii).
- 457 (8) (a) If an individual described in Subsection (7) is participating in a [24/7] 24-7
- 458 sobriety program as defined in Section 41-6a-515.5, the court may suspend the jail
- 459 sentence imposed under Subsection (7)(a) after the individual has served a minimum
- 460 of:
- 461 (i) five days of the jail sentence for a second offense; or
- 462 (ii) 10 days of the jail sentence for a third or subsequent offense.
- 463 (b) If an individual described in Subsection (8)(a) fails to successfully complete all of
- 464 the requirements of the [24/7] 24-7 sobriety program, the court shall impose the
- 465 suspended jail sentence described in Subsection (8)(a).
- 466 (9) Under Subsection 41-6a-502(2)(c), if the court suspends the execution of a prison
- 467 sentence and places the defendant on probation [~~where there is admissible evidence that~~
- 468 ~~the individual had a blood or breath alcohol level of .16 or higher, had a blood or breath~~
- 469 ~~alcohol level of .05 in addition to any measurable controlled substance, or had a~~

- 470 combination of two or more controlled substances in the person's body that were not
471 recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research
472 ~~Medical Cannabis, or prescribed,] for a conviction of extreme DUI, the court shall~~
473 impose:
- 474 (a) a fine of not less than \$1,500;
 - 475 (b) a jail sentence of not less than 120 days;
 - 476 (c) home confinement of not fewer than 120 consecutive days through the use of
477 electronic monitoring that includes a substance abuse testing instrument in
478 accordance with Section 41-6a-506; and
 - 479 (d) supervised probation.
- 480 (10) (a) For Subsection (9) or Subsection 41-6a-502(2)(c)(i), the court:
- 481 (i) shall impose an order requiring the individual to obtain a screening and
482 assessment for alcohol and substance abuse, and treatment as appropriate; and
 - 483 (ii) may impose an order requiring the individual to participate in a [24/7] 24-7
484 sobriety program as defined in Section 41-6a-515.5 if the individual is 21 years
485 old or older.
- 486 (b) If an individual described in Subsection (10)(a)(ii) fails to successfully complete all
487 of the requirements of the [24/7] 24-7 sobriety program, the court shall impose the
488 suspended prison sentence described in Subsection (9).
- 489 (11) Under Subsection 41-6a-502(2)(c), if the court suspends the execution of a prison
490 sentence and places the defendant on probation with a sentence not described in
491 Subsection (9), the court shall impose:
- 492 (a) a fine of not less than \$1,500;
 - 493 (b) a jail sentence of not less than 60 days;
 - 494 (c) home confinement of not fewer than 60 consecutive days through the use of
495 electronic monitoring that includes a substance abuse testing instrument in
496 accordance with Section 41-6a-506; and
 - 497 (d) supervised probation.
- 498 (12) (a) (i) Except as described in Subsection (12)(a)(ii), a court may not suspend the
499 requirements of this section.
- 500 (ii) A court may suspend requirements as described in Subsection (2), (4), (6), or (8).
- 501 (b) A court, with stipulation of both parties and approval from the judge, may convert a
502 jail sentence required in this section to electronic home confinement.
- 503 (c) A court may order a jail sentence imposed as a condition of misdemeanor probation

504 under this section to be served in multiple two-day increments at weekly intervals if
505 the court determines that separate jail increments are necessary to ensure the
506 defendant can serve the statutorily required jail term and maintain employment.

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

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

512 (b) one or more of the following:

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

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

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

519 Section 5. Section **41-6a-515.5** is amended to read:

520 **41-6a-515.5 . Sobriety program for DUI.**

521 (1) As used in this section:

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

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

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

526 (iii) requires the individual to be subject to testing to determine the presence of
527 alcohol:

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

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

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

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

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

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

- 538 (B) drug patch testing;
- 539 (C) urinalysis testing;
- 540 (D) saliva testing;
- 541 (E) continuous remote sensing;
- 542 (F) transdermal alcohol monitoring; or
- 543 (G) alternate body fluids approved for testing by the commissioner of the
- 544 department.
- 545 (2) The department may establish a 24-7 sobriety program with a law enforcement agency
- 546 that is able to meet the 24-7 sobriety program qualifications and requirements under this
- 547 section.
- 548 (3) (a) The 24-7 sobriety program shall include use of multiple testing methodologies for
- 549 the presence of alcohol or drugs that:
- 550 (i) best facilitates the ability to apply timely sanctions for noncompliance;
- 551 (ii) is available at an affordable cost; and
- 552 (iii) provides for positive, behavioral reinforcement for program compliance.
- 553 (b) The commissioner shall consider the following factors to determine which testing
- 554 methodologies are best suited for each participant:
- 555 (i) whether a device is available;
- 556 (ii) whether the participant is capable of paying the fees and costs associated with
- 557 each testing methodology;
- 558 (iii) travel requirements based on each testing methodology and the participant's
- 559 circumstances;
- 560 (iv) the substance or substances for which testing will be required; and
- 561 (v) other factors the commissioner considers relevant.
- 562 (4) (a) The 24-7 sobriety program shall be supported by evidence of effectiveness and
- 563 satisfy at least two of the following categories:
- 564 (i) the program is included in the federal registry of evidence-based programs and
- 565 practices;
- 566 (ii) the program has been reported in a peer-reviewed journal as having positive
- 567 effects on the primary targeted outcome; or
- 568 (iii) the program has been documented as effective by informed experts and other
- 569 sources.
- 570 (b) If a law enforcement agency participates in a 24-7 sobriety program, the department
- 571 shall assist in the creation and administration of the program in the manner provided

- 572 in this section.
- 573 (c) A 24-7 sobriety program shall have at least one testing location and two daily testing
574 times approximately 12 hours apart.
- 575 (d) ~~[A person]~~ An individual who is ordered by a judge to participate in the 24-7 sobriety
576 program for a first conviction as defined in Subsection 41-6a-501(2) shall be required
577 to participate in a 24-7 sobriety program for at least 30 days.
- 578 (e) If ~~[a person]~~ an individual who is ordered by a judge to participate in the 24-7
579 sobriety program has a prior conviction as defined in Subsection 41-6a-501(2) that is
580 within 10 years of the current conviction under Section 41-6a-502 or the commission
581 of the offense upon which the current conviction is based, the ~~[person]~~ individual
582 shall be required to participate in a 24-7 sobriety program for at least one year.
- 583 (5) (a) If a law enforcement agency participates in a 24-7 sobriety program, the law
584 enforcement agency may designate an entity to provide the testing services or to take
585 any other action required or authorized to be provided by the law enforcement agency
586 pursuant to this section, except that the law enforcement agency's designee may not
587 determine whether an individual is required to participate in the 24-7 sobriety
588 program.
- 589 (b) Subject to the requirement in Subsection (4)(c), the law enforcement agency shall
590 establish the testing locations and times for the county.
- 591 (6) (a) The commissioner of the department shall establish a data management
592 technology plan for data collection on 24-7 sobriety program participants.
- 593 (b) All required data related to participants in the 24-7 sobriety program shall be
594 received into the data management technology plan.
- 595 (c) The data collected under this Subsection (6) is owned by the state.
- 596 (7) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
597 the department shall make rules to implement this section.
- 598 (b) The rules under Subsection (7)(a) shall:
- 599 (i) provide for the nature and manner of testing and the procedures and apparatus to
600 be used for testing;
- 601 (ii) establish reasonable participation and testing fees for the program, including the
602 collection of fees to pay the cost of installation, monitoring, and deactivation of
603 any testing device;
- 604 (iii) establish a process for determining indigency and waiving of a portion of the
605 participation and testing fees for indigent individuals in accordance with

606 Subsection (8);
 607 [~~(iii)~~] (iv) require and provide for the approval of a 24-7 sobriety program data
 608 management technology plan that shall be used by the department and
 609 participating law enforcement agencies to manage testing, data access, fees and
 610 fee payments, and any required reports; and
 611 [~~(iv)~~] (v) establish a model sanctioning schedule for program noncompliance.

- 612 (8) (a) The department may waive the department's portion of the participation and
 613 testing fees, entirely or in part, for individuals who meet the requirements for
 614 indigency provided in Section 78B-22-202.
 615 (b) The department may not waive the portion of the participation and testing fees that
 616 are retained by a participating law enforcement agency or testing program site.
 617 (c) The department may periodically adjust participation and testing fees to offset lost
 618 program revenue resulting from any fee waivers.
 619 (d) If an individual for whom the department waived fees under this Subsection (8) fails
 620 to successfully complete all of the requirements of the 24-7 sobriety program, a court
 621 may order the individual to pay the department for any waived fees.

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

623 **41-6a-518.2 . Interlock restricted driver -- Penalties for operation without**
 624 **ignition interlock system -- Exemptions.**

625 (1) As used in this section:

- 626 (a) "Ignition interlock system" means a constant monitoring device or any similar device
 627 that:
 628 (i) is in working order at the time of operation or actual physical control; and
 629 (ii) is certified by the Commissioner of Public Safety in accordance with Subsection
 630 41-6a-518(8).

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

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

635 [~~(B) within the last 18 months has been convicted of a violation under Section~~
 636 ~~41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1;]~~

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

639 [~~(H) the offense described under Subsection (1)(b)(i)(C)(I) is committed within 10~~

- 640 years from the date that one or more prior offenses was committed if the prior
641 offense
642 resulted in a conviction as defined in Section 41-6a-501;]
- 643 [(D) within the last three years has been convicted of a violation of this section;]
- 644 [(E) within the last three years has had the person's driving privilege revoked through
645 an administrative action for refusal to submit to a chemical test under Section
646 41-6a-520;]
- 647 [(F) within the last three years has been convicted of a violation of Section 41-6a-502,
648 Subsection 41-6a-520.1(1), or Section 76-5-102.1 and was under 21 years old at the
649 time the offense was committed;]
- 650 [(G) within the last six years has been convicted of a felony violation of Section
651 41-6a-502, Subsection 41-6a-520.1(1), or Section 76-5-102.1 for an offense that
652 occurred after May 1, 2006; or]
- 653 [(H) within the last 10 years has been convicted of a violation of Section 76-5-207 for
654 an offense that occurred after May 1, 2006.]
- 655 (b) (i) "Interlock restricted driver" means a person who has been ordered by a court
656 or the Board of Pardons and Parole as a condition of probation or parole not to
657 operate a motor vehicle without an ignition interlock system.
- 658 (ii) "Interlock restricted driver" includes, for the time periods described in
659 Subsection
660 (2), a person who:
- 661 (A) has been convicted of a violation under Section 41-6a-502, Subsection
662 41-6a-520.1(1), or Section 76-5-102.1;
- 663 (B) has been convicted of an offense which would be a conviction as defined
664 under Section 41-6a-501, and that offense is committed within 10 years
665 from
666 the date that one or more prior offenses was committed if the prior offense
667 resulted in a conviction as defined in Section 41-6a-501;
- 668 (C) has been convicted of a violation of this section;
- 669 (D) has been convicted of a violation of Section 41-6a-502, Subsection
670 41-6a-520.1(1), or Section 76-5-102.1 and was under 21 years old at the
671 time
672 the offense was committed;
- 673 (E) has been convicted of a felony violation of Section 41-6a-502, Subsection

- 670 41-6a-520.1(1), or Section 76-5-102.1;
 671 (F) has been convicted of a violation of Section 76-5-207; or
 672 (G) has had the person's driving privilege revoked through an administrative
 673 action for refusal to submit to a chemical test under Section 41-6a-520.
 674 ~~[(ii)]~~ (iii) "Interlock restricted driver" does not include a person:
 675 (A) whose current conviction described in Subsection ~~[(1)(b)(i)(C)(F)]~~ (1)(b)
 676 (ii)(B)
 677 is a conviction under Section 41-6a-502 that does not involve alcohol or a
 678 conviction under Section 41-6a-517 and whose prior convictions described
 679 in
 680 Subsection ~~[(1)(b)(i)(C)(F)]~~ (1)(b)(ii)(B) are all convictions under Section
 681 41-6a-502 that did not involve alcohol or convictions under Section
 682 41-6a-517;
 683 (B) whose conviction described in Subsection ~~[(1)(b)(i)(B) or (F)]~~ (1)(b)(ii)(A)
 684 or
 685 (E) is a conviction under Section 41-6a-502 that does not involve alcohol
 686 and
 687 the convicting court notifies the Driver License Division at the time of
 688 sentencing that the conviction does not involve alcohol; or
 689 (C) whose conviction described in Subsection ~~[(1)(b)(i)(B), (C), or (F)]~~
 690 (1)(b)(ii)(A), (B), or (D) is a conviction under Section 41-6a-502 that does
 691 not
 692 involve alcohol and the ignition interlock restriction is removed as
 693 described in
 694 Subsection ~~[(7)]~~ (8).
 695 (2) (a) The ignition interlock restriction period for an ignition interlock restricted driver
 696 under Subsection (1)(b)(ii) begins on:
 697 (i) for a violation described in Subsections (1)(b)(ii)(A) through (F), the date of
 698 conviction; or
 699 (ii) for a person described in Subsection (1)(b)(ii)(G), the effective date of the
 700 revocation.
 701 (b) The ignition interlock restriction period for an ignition interlock restricted driver
 702 under Subsection (1)(b)(ii) ends:
 703 (i) for a violation described in Subsection (1)(b)(ii)(A), 18 months from the day the

- 697 ignition interlock restricted driver:
- 698 (A) provides proof of installation of the ignition interlock system; and
- 699 (B) reinstates their driving privilege;
- 700 (ii) for a violation described in Subsections (1)(b)(ii)(B) through (D) and Subsection
- 701 (1)(b)(ii)(G), two years from the date the ignition interlock restricted driver:
- 702 (A) provides proof of installation of the ignition interlock system; and
- 703 (B) reinstates their driving privilege;
- 704 (iii) for a violation described in Subsection (1)(b)(ii)(E), three years from the date the
- 705 ignition interlock restricted driver:
- 706 (A) provides proof of installation of the ignition interlock system; and
- 707 (B) reinstates their driving privilege; and
- 708 (iv) for a violation described in Subsection (1)(b)(ii)(F), four years from the date the
- 709 ignition interlock restricted driver:
- 710 (A) provides proof of installation of the ignition interlock system; and
- 711 (B) reinstates their driving privilege.
- 712 (c) If an ignition interlock system is removed from the vehicle before the restriction
- 713 period under Subsection (2)(b) has ended, the ignition interlock restriction period is
- 714 extended by the number of days the ignition interlock system was removed from the
- 715 person's vehicle.
- 716 (d) An ignition interlock restricted driver may petition the Driver License Division for
- 717 removal of the ignition interlock restriction related to a first offense under Section
- 718 41-6a-502, and the Driver License Division may grant the petition, if:
- 719 (i) the ignition interlock restricted driver was 21 years old or older at the time of the
- 720 offense;
- 721 (ii) the individual does not have a prior conviction, as defined in Section 41-6a-501,
- 722 that is within 10 years of the current conviction under Section 41-6a-502 or the
- 723 commission of the offense upon which the current conviction is based;
- 724 (iii) at least two years have elapsed since the date of the conviction under Section
- 725 41-6a-502; and
- 726 (iv) during the time frame from the date of conviction under Section 41-6a-502 to the
- 727 date the person petitions the Driver License Division for removal of the ignition
- 728 interlock restriction:
- 729 (A) the ignition interlock restricted driver certifies to the division that the ignition
- 730 interlock restricted driver has not operated a motor vehicle;

731 (B) there is no evidence of a traffic or driving related violation on the ignition
732 interlock restricted driver's driving record; and

733 (C) there is no evidence of a motor vehicle crash involving the interlock restricted
734 driver where the interlock restricted driver was operating a motor vehicle.

735 ~~[(2)]~~ (3) The division shall post the ignition interlock restriction on a person's electronic
736 record that is available to law enforcement.

737 ~~[(3)]~~ (4) For purposes of this section, a plea of guilty or no contest to a violation of Section
738 41-6a-502 which plea was held in abeyance under Title 77, Chapter 2a, Pleas in
739 Abeyance, prior to July 1, 2008, is the equivalent of a conviction, even if the charge has
740 been subsequently reduced or dismissed in accordance with the plea in abeyance
741 agreement.

742 ~~[(4)]~~ (5) An interlock restricted driver who operates or is in actual physical control of a
743 vehicle in the state without an ignition interlock system is guilty of a class B
744 misdemeanor.

745 ~~[(5)]~~ (6) It is an affirmative defense to a charge of a violation of Subsection ~~[(4)]~~ (5) if:

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

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

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

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

756 ~~[(6)]~~ (7) The affirmative defense described in Subsection ~~[(5)]~~ (6) does not apply to:

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

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

761 ~~[(7)]~~ (8) (a) An individual with an ignition interlock restriction may petition the division
762 for removal of the restriction if the individual's offense did not involve alcohol.

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

- 765 ~~[(8)]~~ (9) (a) (i) An individual with an ignition interlock restriction may petition the
 766 division for removal of the restriction if the individual has a medical condition
 767 that prohibits the individual from providing a deep lung breath sample.
- 768 (ii) In support of a petition under Subsection ~~[(8)(a)(i)]~~ (9)(a)(i), the individual shall
 769 provide documentation from a physician that describes the individual's medical
 770 condition and whether the individual's medical condition would prohibit the
 771 individual from being able to provide a deep breath lung sample.
- 772 (b) If the division is able to establish that an individual is unable to provide a deep
 773 breath lung sample as a result of a medical condition, the division may remove the
 774 ignition interlock restriction.
- 775 Section 7. Section **41-6a-520.1** is amended to read:
- 776 **41-6a-520.1 . Refusing a chemical test.**
- 777 (1) An actor commits refusing a chemical test if:
- 778 (a) a peace officer issues the warning required in Subsection 41-6a-520(2)(a);
 779 (b) a court issues a warrant to draw and test the blood; and
 780 (c) after Subsections (1)(a) and (b), the actor refuses to submit to a test of the actor's
 781 blood.
- 782 (2) (a) A violation of Subsection (1) is a class B misdemeanor.
- 783 (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A
 784 misdemeanor if the actor:
- 785 (i) has a passenger younger than 16 years old in the vehicle at the time the officer had
 786 grounds to believe the actor was driving under the influence;
- 787 (ii) is 21 years old or older and has a passenger younger than 18 years old in the
 788 vehicle at the time the officer had grounds to believe the actor was driving under
 789 the influence;
- 790 (iii) also violated Section 41-6a-712 or 41-6a-714 at the time of the offense; or
 791 (iv) has one prior conviction within 10 years of:
- 792 (A) the current conviction under Subsection (1); or
 793 (B) the commission of the offense upon which the current conviction is based.
- 794 (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree
 795 felony if:
- 796 (i) the actor has two or more prior convictions, each of which is within 10 years of:
- 797 (A) the current conviction; or
 798 (B) the commission of the offense upon which the current conviction is based; or

- 799 (ii) the current conviction is at any time after:
800 (A) a felony conviction; or
801 (B) any conviction described in Subsection (2)(c)(ii)(A) for which judgment of
802 conviction is reduced under Section 76-3-402.
- 803 [~~(ii) the current conviction is at any time after a conviction of:~~]
804 [~~(A) a violation of Section 76-5-207;~~]
805 [~~(B) a felony violation of this section, Section 76-5-102.1, 41-6a-502, or a statute~~
806 ~~previously in effect in this state that would constitute a violation of this section; or]~~
807 [~~(C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of~~
808 ~~conviction is reduced under Section 76-3-402.]~~
- 809 (3) As part of any sentence for a conviction of violating this section, the court shall impose
810 the same sentencing as outlined for driving under the influence violations in Section
811 41-6a-505, based on whether this is a first, second, or subsequent conviction, with the
812 following modifications:
- 813 (a) any jail sentence shall be 24 consecutive hours more than is required under Section
814 41-6a-505;
- 815 (b) any fine imposed shall be \$100 more than is required under Section 41-6a-505; and
- 816 (c) the court shall order one or more of the following:
- 817 (i) the installation of an ignition interlock system as a condition of probation for the
818 individual, in accordance with Section 41-6a-518;
- 819 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring
820 device as a condition of probation for the individual; or
- 821 (iii) the imposition of home confinement through the use of electronic monitoring, in
822 accordance with Section 41-6a-506.
- 823 (4) (a) The offense of refusing a chemical test under this section does not merge with
824 any violation of Section 32B-4-409, 41-6a-502, 41-6a-517, or 41-6a-530.
- 825 (b) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense of
826 refusal to submit to a chemical test under this section may not be held in abeyance.
- 827 (5) An actor is guilty of a separate offense under Subsection (1) for each passenger in the
828 vehicle that is younger than 16 years old at the time the officer had grounds to believe
829 the actor was driving under the influence.

830 Section 8. Section **53-3-1007** is amended to read:

831 **53-3-1007 . Ignition interlock system provider -- Notification to the division upon**
832 **installation or removal of an ignition interlock system -- Monitoring and reporting**

833 **requirements -- Penalties.**

- 834 (1) An ignition interlock system provider who installs an ignition interlock system on an
835 individual's vehicle shall:
- 836 (a) provide proof of installation to the individual; and
837 (b) electronically notify the division of installation of an ignition interlock system on the
838 individual's vehicle.
- 839 (2) An ignition interlock system provider shall electronically notify the division if an
840 individual has:
- 841 (a) removed an ignition interlock system from the individual's vehicle;
842 (b) attempted to start the motor vehicle with a measurable breath alcohol concentration,
843 and the attempt to start the motor vehicle was prevented by the ignition interlock
844 system, including the date and time of each attempt; or
845 (c) failed to report to the ignition interlock provider for the purpose of monitoring the
846 device every 60 days, or more frequently if ordered by the court as described in
847 Subsection 41-6a-518(5)(a).
- 848 (3) If an individual is an interlock restricted driver and the individual removes an ignition
849 interlock system as described in Subsection (2)(a), the division shall:
- 850 (a) suspend the individual's driving privilege for the duration of the restriction period as
851 defined in Section 41-6a-518.2; and
852 (b) notify the individual of the suspension period in place and the requirements for
853 reinstatement of the driving privilege with respect to the ignition interlock restriction
854 suspension.
- 855 (4) The division shall clear a suspension described in Subsection (3) upon:
- 856 (a) receipt of payment of the fee or fees required under Section 53-3-105; and
857 (b) (i) receipt of electronic notification from an ignition interlock system provider
858 showing proof of the installation of an ignition interlock system on the individual's
859 vehicle or the vehicle the individual will be operating;
860 (ii) if the individual does not own a vehicle or will not be operating a vehicle owned
861 by another individual:
862 (A) electronic verification that the individual does not have a vehicle registered in
863 the individual's name in the state; and
864 (B) receipt of employer verification, as defined in Subsection 41-6a-518(1); or
865 (iii) if the individual is not a resident of Utah, electronic verification that the
866 individual is licensed in the individual's state of residence or is in the process of

- 867 obtaining a license in the individual's state of residence.
- 868 (5) If Subsection (4)(b)(ii) applies, the division shall every six months:
- 869 (a) electronically verify the individual does not have a vehicle registered in the
- 870 individual's name in the state; and
- 871 (b) require the individual to provide updated documentation described in Subsection
- 872 (4)(b)(ii).
- 873 (6) If the individual described in Subsection (5) does not provide the required
- 874 documentation described in Subsection (4)(b)(ii), the division shall suspend the
- 875 individual's driving privilege until:
- 876 (a) the division receives payment of the fee or fees required under Section 53-3-105; and
- 877 (b) (i) the division:
- 878 (A) receives electronic notification from an ignition interlock system provider
- 879 showing proof of the installation of an ignition interlock system on the
- 880 individual's vehicle or the vehicle the individual will be operating; or
- 881 (B) if the individual does not own a vehicle or will not be operating a vehicle
- 882 owned by another individual, receives electronic verification that the individual
- 883 does not have a vehicle registered in the individual's name in the state, and
- 884 receives employer verification, as defined in Subsection 41-6a-518(1); or
- 885 (ii) if the individual is not a resident of Utah, electronic verification that the
- 886 individual is licensed in the individual's state of residence or is in the process of
- 887 obtaining a license in the individual's state of residence.
- 888 (7) By following the procedures in Title 63G, Chapter 4, Administrative Procedures Act,
- 889 the division shall suspend the license of any individual without receiving a record of the
- 890 individual's conviction of crime seven days after receiving electronic notification from
- 891 an ignition interlock system provider that an individual has removed an ignition
- 892 interlock system from the individual's vehicle or a vehicle owned by another individual
- 893 and operated by the individual if the individual is an interlock restricted driver until:
- 894 (a) the division receives payment of the fee or fees specified in Section 53-3-105; and
- 895 (b) (i) (A) the division receives electronic notification from an ignition interlock
- 896 system provider showing new proof of the installation of an ignition interlock
- 897 system on the individual's vehicle or the vehicle the individual will be
- 898 operating; or
- 899 (B) if the individual does not own a vehicle or will not be operating a vehicle
- 900 owned by another individual, the division receives electronic verification that

901 the individual does not have a vehicle registered in the individual's name in the
 902 state, and receives employer verification, as defined in Subsection 41-6a-518

903 (1);

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

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

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

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

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

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

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

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

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

920 (e) procedures for the removal of an ignition interlock restriction if the individual is
 921 unable to provide a deep lung breath sample as a result of a medical condition and is
 922 unable to properly use an ignition interlock system as described in Subsection [

923 ~~41-6a-518.2(8)~~ 41-6a-518.2(9); and

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

926 Section 9. Section **63M-7-404** is amended to read:

927 **63M-7-404 . Purpose -- Duties.**

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

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

931 (i) respond to public comment;

932 (ii) relate sentencing practices and correctional resources;

933 (iii) increase equity in criminal sentencing;

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

- 935 (v) enhance the discretion of sentencing judges while preserving the role of the Board
936 of Pardons and Parole and the Youth Parole Authority;
- 937 (b) the length of supervision of adult offenders on probation or parole in order to:
- 938 (i) increase equity in criminal supervision lengths;
- 939 (ii) respond to public comment;
- 940 (iii) relate the length of supervision to an offender's progress;
- 941 (iv) take into account an offender's risk of offending again;
- 942 (v) relate the length of supervision to the amount of time an offender has remained
943 under supervision in the community; and
- 944 (vi) enhance the discretion of the sentencing judges while preserving the role of the
945 Board of Pardons and Parole; and
- 946 (c) appropriate, evidence-based probation and parole supervision policies and services
947 that assist individuals in successfully completing supervision and reduce
948 incarceration rates from community supervision programs while ensuring public
949 safety, including:
- 950 (i) treatment and intervention completion determinations based on individualized
951 case action plans;
- 952 (ii) measured and consistent processes for addressing violations of conditions of
953 supervision;
- 954 (iii) processes that include using positive reinforcement to recognize an individual's
955 progress in supervision;
- 956 (iv) engaging with social services agencies and other stakeholders who provide
957 services that meet offender needs; and
- 958 (v) identifying community violations that may not warrant revocation of probation or
959 parole.
- 960 (2) (a) The commission shall modify the sentencing guidelines and supervision length
961 guidelines for adult offenders to implement the recommendations of the State
962 Commission on Criminal and Juvenile Justice for reducing recidivism.
- 963 (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting the
964 public and ensuring efficient use of state funds.
- 965 (3) (a) The commission shall modify the criminal history score in the sentencing
966 guidelines for adult offenders to implement the recommendations of the State
967 Commission on Criminal and Juvenile Justice for reducing recidivism.
- 968 (b) The modifications to the criminal history score under Subsection (3)(a) shall include

- 969 factors in an offender's criminal history that are relevant to the accurate determination
970 of an individual's risk of offending again.
- 971 (4) (a) The commission shall establish sentencing guidelines for periods of incarceration
972 for individuals who are on probation and:
- 973 (i) who have violated one or more conditions of probation; and
 - 974 (ii) whose probation has been revoked by the court.
- 975 (b) For a situation described in Subsection (4)(a), the guidelines shall recommend that a
976 court consider:
- 977 (i) the seriousness of any violation of the condition of probation;
 - 978 (ii) the probationer's conduct while on probation; and
 - 979 (iii) the probationer's criminal history.
- 980 (5) (a) The commission shall establish sentencing guidelines for periods of incarceration
981 for individuals who are on parole and:
- 982 (i) who have violated a condition of parole; and
 - 983 (ii) whose parole has been revoked by the Board of Pardons and Parole.
- 984 (b) For a situation described in Subsection (5)(a), the guidelines shall recommend that
985 the Board of Pardons and Parole consider:
- 986 (i) the seriousness of any violation of the condition of parole;
 - 987 (ii) the individual's conduct while on parole; and
 - 988 (iii) the individual's criminal history.
- 989 (6) The commission shall establish graduated and evidence-based processes to facilitate the
990 prompt and effective response to an individual's progress in or violation of the terms of
991 probation or parole by the adult probation and parole section of the Department of
992 Corrections, or other supervision services provider, to implement the recommendations
993 of the State Commission on Criminal and Juvenile Justice for reducing recidivism and
994 incarceration, including:
- 995 (a) responses to be used when an individual violates a condition of probation or parole;
 - 996 (b) responses to recognize positive behavior and progress related to an individual's case
997 action plan;
 - 998 (c) when a violation of a condition of probation or parole should be reported to the court
999 or the Board of Pardons and Parole; and
 - 1000 (d) a range of sanctions that may not exceed a period of incarceration of more than:
 - 1001 (i) three consecutive days; and
 - 1002 (ii) a total of five days in a period of 30 days.

- 1003 (7) The commission shall establish graduated incentives to facilitate a prompt and effective
1004 response by the adult probation and parole section of the Department of Corrections to
1005 an offender's:
- 1006 (a) compliance with the terms of probation or parole; and
 - 1007 (b) positive conduct that exceeds those terms.
- 1008 (8) (a) The commission shall establish guidelines, including sanctions and incentives, to
1009 appropriately respond to negative and positive behavior of juveniles who are:
- 1010 (i) nonjudicially adjusted;
 - 1011 (ii) placed on diversion;
 - 1012 (iii) placed on probation;
 - 1013 (iv) placed on community supervision;
 - 1014 (v) placed in an out-of-home placement; or
 - 1015 (vi) placed in a secure care facility.
- 1016 (b) In establishing guidelines under this Subsection (8), the commission shall consider:
- 1017 (i) the seriousness of the negative and positive behavior;
 - 1018 (ii) the juvenile's conduct post-adjudication; and
 - 1019 (iii) the delinquency history of the juvenile.
- 1020 (c) The guidelines shall include:
- 1021 (i) responses that are swift and certain;
 - 1022 (ii) a continuum of community-based options for juveniles living at home;
 - 1023 (iii) responses that target the individual's criminogenic risk and needs; and
 - 1024 (iv) incentives for compliance, including earned discharge credits.
- 1025 (9) The commission shall establish and maintain supervision length guidelines in
1026 accordance with this section.
- 1027 (10) (a) The commission shall create sentencing guidelines and supervision length
1028 guidelines for the following financial and property offenses for which a pecuniary
1029 loss to a victim may exceed \$50,000:
- 1030 (i) securities fraud, Sections 61-1-1 and 61-1-21;
 - 1031 (ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment
1032 adviser representative, Sections 61-1-3 and 61-1-21;
 - 1033 (iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;
 - 1034 (iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1,
1035 Assault and Related Offenses;
 - 1036 (v) arson, Section 76-6-102;

- 1037 (vi) burglary, Section 76-6-202;
- 1038 (vii) theft under Title 76, Chapter 6, Part 4, Theft;
- 1039 (viii) forgery, Section 76-6-501;
- 1040 (ix) unlawful dealing of property by a fiduciary, Section 76-6-513;
- 1041 (x) insurance fraud, Section 76-6-521;
- 1042 (xi) computer crimes, Section 76-6-703;
- 1043 (xii) mortgage fraud, Section 76-6-1203;
- 1044 (xiii) pattern of unlawful activity, Sections 76-10-1603 and 76-10-1603.5;
- 1045 (xiv) communications fraud, Section 76-10-1801;
- 1046 (xv) money laundering, Section 76-10-1904; and
- 1047 (xvi) other offenses in the discretion of the commission.
- 1048 (b) The guidelines described in Subsection (10)(a) shall include a sentencing matrix with
- 1049 proportionate escalating sanctions based on the amount of a victim's loss.
- 1050 (c) On or before August 1, 2022, the commission shall publish for public comment the
- 1051 guidelines described in Subsection (10)(a).
- 1052 (11) (a) Before January 1, 2023, the commission shall study the offenses of sexual
- 1053 exploitation of a minor and aggravated sexual exploitation of a minor under Sections
- 1054 76-5b-201 and 76-5b-201.1.
- 1055 (b) The commission shall update sentencing and release guidelines and juvenile
- 1056 disposition guidelines to reflect appropriate sanctions for an offense listed in
- 1057 Subsection (11)(a), including the application of aggravating and mitigating factors
- 1058 specific to the offense.
- 1059 (12) (a) Before July 1, 2024, the commission shall review and revise the commission's
- 1060 sentencing guidelines and supervision length guidelines to reflect appropriate
- 1061 penalties for the following offenses:
- 1062 (i) an interlock restricted driver operating a vehicle without an ignition interlock
- 1063 system, Section 41-6a-518.2;
- 1064 (ii) negligently operating a vehicle resulting in injury, Section 76-5-102.1; and
- 1065 (iii) negligently operating a vehicle resulting in death, Section 76-5-207.
- 1066 (b) The guidelines under Subsection (12)(a) shall consider the following:
- 1067 (i) the current sentencing requirements for driving under the influence of alcohol,
- 1068 drugs, or a combination of both as identified in Section 41-6a-505 when injury or
- 1069 death do not result;
- 1070 (ii) the degree of injury and the number of victims suffering injury or death as a result

1071 of the offense;
1072 (iii) the offender's number of previous convictions for driving under the influence
1073 related offenses including those defined in Subsection 41-6a-501(2)(a); and
1074 (iv) whether the offense amounts to extreme DUI, as that term is defined in Section
1075 41-6a-501.

1076 Section 10. Section **76-5-102.1** is amended to read:

1077 **76-5-102.1 . Negligently operating a vehicle resulting in injury.**

1078 (1) (a) As used in this section:

1079 (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.

1080 (ii) "Drug" means the same as that term is defined in Section 76-5-207.

1081 (iii) "Negligent" or "negligence" means the same as that term is defined in Section
1082 76-5-207.

1083 (iv) "Vehicle" means the same as that term is defined in Section 41-6a-501.

1084 (b) Terms defined in Section 76-1-101.5 apply to this section.

1085 (2) An actor commits negligently operating a vehicle resulting in injury if the actor:

1086 (a) (i) operates a vehicle in a negligent manner causing bodily injury to another; and

1087 (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical
1088 test shows that the actor has a blood or breath alcohol concentration of .05
1089 grams or greater at the time of the test;

1090 (B) is under the influence of alcohol, a drug, or the combined influence of alcohol
1091 and a drug to a degree that renders the actor incapable of safely operating a
1092 vehicle; or

1093 (C) has a blood or breath alcohol concentration of .05 grams or greater at the time
1094 of operation; or

1095 (b) (i) operates a vehicle in a criminally negligent manner causing bodily injury to
1096 another; and

1097 (ii) has in the actor's body any measurable amount of a controlled substance.

1098 (3) Except as provided in Subsection (4), a violation of Subsection (2) is:

1099 ~~[(a) (i) a class A misdemeanor; or]~~

1100 ~~[(ii) a third degree felony if the bodily injury is serious bodily injury; and]~~

1101 (a) (i) a class A misdemeanor; or

1102 (ii) a third degree felony if the actor has two or more driving under the influence

1103 related convictions under Subsection 41-6a-501(2)(a), each of which is within 10
1104 years of:

- 1105 (A) the current conviction; or
- 1106 (B) the commission of the offense upon which the current conviction is based;
- 1107 (iii) a third degree felony, if the current conviction is at any time after the conviction
- 1108 of:
- 1109 (A) a conviction, as the term conviction is defined in Subsection 41-6a-501(2),
- 1110 that is a felony; or
- 1111 (B) any conviction described in Subsection (3)(a)(iii)(A) for which judgment of
- 1112 conviction is reduced under Section 76-3-402; or
- 1113 (iv) a third degree felony if the bodily injury is serious bodily injury; and
- 1114 (b) a separate offense for each victim suffering bodily injury as a result of the actor's
- 1115 violation of this section, regardless of whether the injuries arise from the same
- 1116 episode of driving.
- 1117 (4) An actor is not guilty of negligently operating a vehicle resulting in injury under
- 1118 Subsection (2)(b) if:
- 1119 (a) the controlled substance was obtained under a valid prescription or order, directly
- 1120 from a practitioner while acting in the course of the practitioner's professional
- 1121 practice, or as otherwise authorized by Title 58, Occupations and Professions;
- 1122 (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or
- 1123 (c) the actor possessed, in the actor's body, a controlled substance listed in Section
- 1124 58-37-4.2 if:
- 1125 (i) the actor is the subject of medical research conducted by a holder of a valid license
- 1126 to possess controlled substances under Section 58-37-6; and
- 1127 (ii) the substance was administered to the actor by the medical researcher.
- 1128 (5) (a) A judge imposing a sentence under this section may consider:
- 1129 (i) the sentencing guidelines developed in accordance with Section 63M-7-404;
- 1130 (ii) the defendant's history;
- 1131 (iii) the facts of the case;
- 1132 (iv) aggravating and mitigating factors; or
- 1133 (v) any other relevant fact.
- 1134 (b) The judge may not impose a lesser sentence than would be required for a conviction
- 1135 based on the defendant's history under Section 41-6a-505.
- 1136 (c) The standards for chemical breath analysis under Section 41-6a-515 and the
- 1137 provisions for the admissibility of chemical test results under Section 41-6a-516
- 1138 apply to determination and proof of blood alcohol content under this section.

- 1139 (d) A calculation of blood or breath alcohol concentration under this section shall be
1140 made in accordance with Subsection 41-6a-502(3).
- 1141 (e) Except as provided in Subsection (4), the fact that an actor charged with violating
1142 this section is or has been legally entitled to use alcohol or a drug is not a defense.
- 1143 (f) Evidence of a defendant's blood or breath alcohol content or drug content is
1144 admissible except if prohibited by the Utah Rules of Evidence, the United States
1145 Constitution, or the Utah Constitution.
- 1146 (g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense
1147 described in this section may not be held in abeyance.
- 1148 Section 11. Section **77-20-201** is amended to read:
- 1149 **77-20-201 . Right to bail -- Capital felony.**
- 1150 (1) An individual charged with, or arrested for, a criminal offense shall be admitted to bail
1151 as a matter of right, except if the individual is charged with:
- 1152 (a) a capital felony when there is substantial evidence to support the charge;
- 1153 (b) a felony committed while on parole or on probation for a felony conviction, or while
1154 free on bail awaiting trial on a previous felony charge, when there is substantial
1155 evidence to support the current felony charge;
- 1156 (c) a felony when there is substantial evidence to support the charge and the court finds,
1157 by clear and convincing evidence, that:
- 1158 (i) the individual would constitute a substantial danger to any other individual or to
1159 the community after considering available conditions of release that the court may
1160 impose if the individual is released on bail; or
- 1161 (ii) the individual is likely to flee the jurisdiction of the court if the individual is
1162 released on bail;
- 1163 (d) a felony when there is substantial evidence to support the charge and the court finds,
1164 by clear and convincing evidence, that the individual violated a material condition of
1165 release while previously on bail;
- 1166 (e) a domestic violence offense if:
- 1167 (i) there is substantial evidence to support the charge; and
- 1168 (ii) the court finds, by clear and convincing evidence, that the individual would
1169 constitute a substantial danger to an alleged victim of domestic violence after
1170 considering available conditions of release that the court may impose if the
1171 individual is released on bail;
- 1172 (f) the offense of driving under the influence or driving with a measurable controlled

- 1173 substance in the body if:
- 1174 (i) the offense results in death or serious bodily injury to an individual;
- 1175 (ii) there is substantial evidence to support the charge; and
- 1176 (iii) the court finds, by clear and convincing evidence, that the individual would
- 1177 constitute a substantial danger to the community after considering available
- 1178 conditions of release that the court may impose if the individual is released on
- 1179 bail; ~~or~~
- 1180 (g) a felony violation of Section 76-9-101 if:
- 1181 (i) there is substantial evidence to support the charge; and
- 1182 (ii) the court finds, by clear and convincing evidence, that the individual is not likely
- 1183 to appear for a subsequent court appearance~~[-]~~ ; or
- 1184 (h) except as provided in Subsection (4), the offense of driving under the influence or
- 1185 driving with a measurable controlled substance in the body:
- 1186 (i) if committed while on parole or on probation for a driving under the influence or
- 1187 driving with a measurable controlled substance in the body conviction; or
- 1188 (ii) while the individual is out of custody awaiting trial on a previous driving under
- 1189 the influence or driving with a measurable controlled substance in the body
- 1190 charge, when the court finds there is substantial evidence to support the current
- 1191 charge.
- 1192 (2) Notwithstanding any other provision of this section, there is a rebuttable presumption
- 1193 that an individual is a substantial danger to the community under Subsection (1)(f)(iii):
- 1194 (a) as long as the individual has a blood or breath alcohol concentration of .05 grams or
- 1195 greater if the individual is arrested for, or charged with, the offense of driving under
- 1196 the influence and the offense resulted in death or serious bodily injury to an
- 1197 individual; or
- 1198 (b) if the individual has a measurable amount of controlled substance in the individual's
- 1199 body, the individual is arrested for, or charged with, the offense of driving with a
- 1200 measurable controlled substance in the body and the offense resulted in death or
- 1201 serious bodily injury to an individual.
- 1202 (3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section
- 1203 76-5-202, aggravated murder, is a capital felony unless:
- 1204 (a) the prosecuting attorney files a notice of intent to not seek the death penalty; or
- 1205 (b) the time for filing a notice to seek the death penalty has expired and the prosecuting
- 1206 attorney has not filed a notice to seek the death penalty.

- 1207 (4) For purposes of Subsection (1)(h), there is a rebuttable presumption that an individual
1208 would not constitute a substantial danger to any other person or the community if:
1209 (a) the court orders the person to participate in an inpatient drug and alcohol treatment
1210 program; or
1211 (b) the court orders the person to participate in home confinement through the use of
1212 electronic monitoring as described in Section 41-6a-506.

1213 Section 12. **Effective date.**

1214 This bill takes effect on July 1, 2024.

1215 Section 13. **Coordinating H.B. 395 with S.B. 200 if S.B. 213 does not pass and become law.**

1216 If H.B. 395, DUI Offense Amendments, and S.B. 200, State Commission on
1217 Criminal and Juvenile Justice Amendments, both pass and become law, and S.B. 213,
1218 Criminal Justice Modifications, does not pass and become law, the Legislature
1219 intends that, on July 1, 2024, Section 63M-7-404.3 enacted in S.B. 200 be amended
1220 to read:

1221 "63M-7-404.3. Adult sentencing and supervision length guidelines.

1222 (1) The sentencing commission shall establish and maintain adult sentencing and
1223 supervision length guidelines regarding:

1224 (a) the sentencing and release of offenders in order to:

1225 (i) accept public comment;

1226 (ii) relate sentencing practices and correctional resources;

1227 (iii) increase equity in sentencing;

1228 (iv) better define responsibility in sentencing; and

1229 (v) enhance the discretion of the sentencing court while preserving the role of the
1230 Board of Pardons and Parole;

1231 (b) the length of supervision of offenders on probation or parole in order to:

1232 (i) accept public comment;

1233 (ii) increase equity in criminal supervision lengths;

1234 (iii) relate the length of supervision to an offender's progress;

1235 (iv) take into account an offender's risk of offending again;

1236 (v) relate the length of supervision to the amount of time an offender has
1237 remained under supervision in the community; and

1238 (vi) enhance the discretion of the sentencing court while preserving the role of the
1239 Board of Pardons and Parole; and

1240 (c) appropriate, evidence-based probation and parole supervision policies and

1241 services that assist offenders in successfully completing supervision and reduce
1242 incarceration rates from community supervision programs while ensuring public
1243 safety, including:
1244 (i) treatment and intervention completion determinations based on individualized
1245 case action plans;
1246 (ii) measured and consistent processes for addressing violations of conditions of
1247 supervision;
1248 (iii) processes that include using positive reinforcement to recognize an offender's
1249 progress in supervision;
1250 (iv) engaging with social services agencies and other stakeholders who provide
1251 services that meet the needs of an offender; and
1252 (v) identifying community violations that may not warrant revocation of
1253 probation or parole.
1254 (2) The sentencing commission shall modify:
1255 (a) the adult sentencing and supervision length guidelines to reduce recidivism for
1256 the purposes of protecting the public and ensuring efficient use of state funds; and
1257 (b) the criminal history score in the adult sentencing and supervision length
1258 guidelines to reduce recidivism, including factors in an offender's criminal history
1259 that are relevant to the accurate determination of an individual's risk of offending
1260 again.
1261 (3) (a) Before July 1, 2024, the commission shall review and revise the
1262 commission's sentencing guidelines and supervision length guidelines to reflect
1263 appropriate penalties for the following offenses:
1264 (i) an interlock restricted driver operating a vehicle without an ignition interlock
1265 system, Section 41-6a-518.2;
1266 (ii) negligently operating a vehicle resulting in injury, Section 76-5-102.1; and
1267 (iii) negligently operating a vehicle resulting in death, Section 76-5-207.
1268 (b) The guidelines under Subsection (3)(a) shall consider the following:
1269 (i) the current sentencing requirements for driving under the influence of alcohol,
1270 drugs, or a combination of both as identified in Section 41-6a-505 when injury or
1271 death do not result;
1272 (ii) the degree of injury and the number of victims suffering injury or death as a
1273 result of the offense;
1274 (iii) the offender's number of previous convictions for driving under the influence

1275 related offenses including those defined in Subsection 41-6a-501(2)(a); and
1276 (iv) whether the offense amounts to extreme DUI, as that term is defined in
1277 Section 41-6a-501."