

DUI PENALTY AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies the penalty for driving under the influence.

Highlighted Provisions:

This bill:

- increases the penalty for a second driving under the influence conviction to a class

A misdemeanor under certain circumstances; and

- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-503, as last amended by Laws of Utah 2021, Chapter 79**41-6a-505**, as last amended by Laws of Utah 2021, Chapters 79 and 83

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **41-6a-503** is amended to read:**41-6a-503. Penalties for driving under the influence violations.**(1) [A] Except as otherwise provided in this section, a person who violates [for the first

~~or second time~~] Section 41-6a-502 is guilty of a~~[(a)]~~ class B misdemeanor~~[, or]~~.

~~[(b) class A misdemeanor if the person:]~~

(2) A person who violates Section 41-6a-502 is guilty of a class A misdemeanor if the person:

~~[(i)]~~ (a) has also inflicted bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;

~~[(ii)]~~ (b) had a passenger ~~[under 16 years of age]~~ younger than 16 years old in the vehicle at the time of the offense;

~~[(iii)]~~ (c) was 21 years ~~[of age]~~ old or older and had a passenger ~~[under 18 years of age]~~ younger than 18 years old in the vehicle at the time of the offense; ~~[or]~~

~~[(iv)]~~ (d) at the time of the violation of Section 41-6a-502, also violated Section 41-6a-712 or 41-6a-714~~[-]; or~~

(e) has one prior conviction as defined in Subsection 41-6a-501(2) within 10 years of:

(i) the current conviction under Section 41-6a-502; or

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

~~[(2)]~~ (3) A person who violates Section 41-6a-502 is guilty of a third degree felony if:

(a) the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;

(b) the person has two or more prior convictions as defined in Subsection 41-6a-501(2), each of which is within 10 years of:

(i) the current conviction under Section 41-6a-502; or

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

(c) the conviction under Section 41-6a-502 is at any time after a conviction of:

(i) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;

(ii) a felony violation of Section 41-6a-502 or a statute previously in effect in this state that would constitute a violation of Section 41-6a-502 that is committed after July 1, 2001; or

(iii) any conviction described in Subsection ~~[(2)]~~ (3)(c)(i) or (ii) which judgment of conviction is reduced under Section 76-3-402.

~~[(3)]~~ (4) A person is guilty of a separate offense for each victim suffering bodily injury or serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a result of the person's violation of Section 76-5-207 whether or not the injuries arise from the

59 same episode of driving.

60 ~~[(4)]~~ (5) A person is guilty of a separate offense under Subsection ~~[(1)(b)(ii)]~~ (2)(b) for
61 each passenger in the vehicle at the time of the offense that is ~~[under]~~ younger than 16 years
62 old.

63 Section 2. Section **41-6a-505** is amended to read:

64 **41-6a-505. Sentencing requirements for driving under the influence of alcohol,**
65 **drugs, or a combination of both violations.**

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

72 (a) the court shall:

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

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

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

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

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

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

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

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

86 (B) if the administrative impound fee was paid by a party described in Subsection
87 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to
88 reimburse the party;

89 (viii) (A) order the individual to pay the towing and storage fees described in Section

72-9-603; or

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

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

(b) the court may:

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

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

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

(iv) order a combination of Subsections (1)(b)(i) through (iii).

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

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

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

(a) the court shall:

(i) (A) impose a jail sentence of not less than 2 days; or

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

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

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

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

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

122 (vi) (A) order the individual to pay the administrative impound fee described in Section

123 41-6a-1406; or

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

125 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to

126 reimburse the party; or

127 (vii) (A) order the individual to pay the towing and storage fees described in Section

128 72-9-603; or

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

130 41-6a-1406(5)(a), other than the individual sentenced, order the individual sentenced to

131 reimburse the party; and

132 (b) the court may:

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

134 treatment program determines that substance abuse treatment is appropriate;

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

136 (iii) order the individual to participate in a 24/7 sobriety program as defined in Section

137 41-6a-515.5 if the individual is 21 years old or older; or

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

139 (4) (a) If an individual described in Subsection (3) is participating in a 24/7 sobriety

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

141 under Subsection (3)(a).

142 (b) If an individual described in Subsection (4)(a) fails to successfully complete all of

143 the requirements of the 24/7 sobriety program, the court shall impose the suspended jail

144 sentence described in Subsection (4)(a).

145 (5) If an individual has a prior conviction as defined in Subsection 41-6a-501(2) that is

146 within 10 years of the current conviction under Section 41-6a-502 or the commission of the

147 offense upon which the current conviction is based and where there is admissible evidence that

148 the individual had a blood alcohol level of .16 or higher, had a blood alcohol level of .05 or

149 higher in addition to any measurable controlled substance, or had a combination of two or more

150 controlled substances in the individual's body that were not recommended in accordance with

151 Title 26, Chapter 61a, Utah Medical Cannabis Act or prescribed:

(a) the court shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the court may:

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

(ii) order the individual to participate in a 24/7 sobriety program as defined in Section

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

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

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

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

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

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

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

(a) the court shall:

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

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

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

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

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

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

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

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

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

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

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

(b) the court may:

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

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

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

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

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

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

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

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

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

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

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

(d) supervised probation.

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

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

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

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

(11) Under Subsection 41-6a-503[(2)](3), if the court suspends the execution of a prison sentence and places the defendant on probation with a sentence not described in Subsection (9), the court shall impose:

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

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

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

(d) supervised probation.

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

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

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

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

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

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

- 276 (b) one or more of the following:
- 277 (i) the installation of an ignition interlock system as a condition of probation for the
- 278 individual in accordance with Section [41-6a-518](#);
- 279 (ii) the imposition of an ankle attached continuous transdermal alcohol monitoring
- 280 device or remote alcohol monitor as a condition of probation for the individual; or
- 281 (iii) the imposition of home confinement through the use of electronic monitoring in
- 282 accordance with Section [41-6a-506](#).