

DUI MODIFICATIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: _____

LONG TITLE**General Description:**

This bill amends provisions related to the requirement of an ignition interlock device for a person convicted of driving under the influence or similar offense.

Highlighted Provisions:

This bill:

- ▶ requires a court to order the installation of an ignition interlock system in certain circumstances, or state on the record that an ignition interlock system is not necessary;
- ▶ allows a person convicted of a first offense of driving under the influence to elect to become an ignition interlock restricted driver in lieu of a driver license suspension;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

41-6a-518, as last amended by Laws of Utah 2018, Chapter 41



53-3-223, as last amended by Laws of Utah 2020, Chapter 177

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

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

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

(1) As part of any sentence for a first conviction of Section 41-6a-502:

(a) the court shall:

(i) (A) impose a jail sentence of not less than 48 consecutive hours; 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 (1)(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 (1)(b);

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

(vi) order probation for the individual in accordance with Section 41-6a-507, if there is admissible evidence that the individual had a blood alcohol level of .16 or higher;

(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~~ 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 of age or older; or

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

(2) 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:

(a) the court shall:

(i) (A) impose a jail sentence of not less than 240 hours; or

(B) impose a jail sentence of not less than 120 hours in addition to home confinement of not fewer than 720 consecutive hours 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 (2)(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 (2)(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](#);

~~[(vii)]~~ (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

~~[(viii)]~~ (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 of age or older; or

(iii) order a combination of Subsections (2)(b)(i) and (ii).

(3) Under Subsection 41-6a-503(2), if the court suspends the execution of a prison sentence and places the defendant on probation, the court shall impose:

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

(b) a jail sentence of not less than 1,500 hours; and

(c) supervised probation.

(4) For Subsection (3) or Subsection 41-6a-503(2)(b), the court:

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

(b) 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 ~~[of age]~~ old or older.

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

(6) 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), (2)(b), or (4); and

(b) one or more of the following:

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

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

(iii) the imposition of home confinement through the use of electronic monitoring in

121 accordance with Section 41-6a-506.

122 Section 2. Section 41-6a-518 is amended to read:

123 **41-6a-518. Ignition interlock devices -- Use -- Probationer to pay cost --**
124 **Impecuniosity -- Fee.**

125 (1) As used in this section:

126 (a) "Commissioner" means the commissioner of the Department of Public Safety.

127 (b) "Employer verification" means written verification from the employer that:

128 (i) the employer is aware that the employee is an interlock restricted driver;

129 (ii) the vehicle the employee is operating for employment purposes is not made
130 available to the employee for personal use;

131 (iii) the business entity that employs the employee is not entirely or partly owned or
132 controlled by the employee;

133 (iv) the employer's auto insurance company is aware that the employee is an interlock
134 restricted driver; and

135 (v) the employee has been added to the employer's auto insurance policy as an operator
136 of the vehicle.

137 (c) "Ignition interlock system" or "system" means a constant monitoring device or any
138 similar device certified by the commissioner that prevents a motor vehicle from being started
139 or continuously operated without first determining the driver's breath alcohol concentration.

140 (d) "Probation provider" means the supervisor and monitor of the ignition interlock
141 system required as a condition of probation who contracts with the court in accordance with
142 Subsections 41-6a-507(2) and (3).

143 (2) (a) In addition to any other penalties imposed under Sections 41-6a-503 and
144 41-6a-505, and in addition to any requirements imposed as a condition of probation, unless the
145 court determines and states on the record that an ignition interlock system is not necessary for
146 the safety of the community and in the best interest of justice, the court ~~[may]~~ shall require that
147 any person who is convicted of violating Section 41-6a-502 and who is granted probation may
148 not operate a motor vehicle during the period of probation unless that motor vehicle is
149 equipped with a functioning, certified ignition interlock system installed and calibrated so that
150 the motor vehicle will not start or continuously operate if the operator's blood alcohol
151 concentration exceeds ~~[a level ordered by the court]~~ .02 grams or greater.

(b) If a person convicted of violating Section 41-6a-502 was under the age of 21 when the violation occurred, the court shall order the installation of the ignition interlock system as a condition of probation.

(c) (i) If a person is convicted of a violation of Section 41-6a-502 within 10 years of a prior conviction as defined in Subsection 41-6a-501(2), the court shall order the installation of the interlock ignition system, at the person's expense, for all motor vehicles registered to that person and all motor vehicles operated by that person.

(ii) A person who operates a motor vehicle without an ignition interlock device as required under this Subsection (2)(c) is in violation of Section 41-6a-518.2.

(d) The division shall post the ignition interlock restriction on the electronic record available to law enforcement.

(e) This section does not apply to a person convicted of a violation of Section 41-6a-502 whose violation does not involve alcohol.

(3) If the court imposes the use of an ignition interlock system as a condition of probation, the court shall:

(a) stipulate on the record the requirement for and the period of the use of an ignition interlock system;

(b) order that an ignition interlock system be installed on each motor vehicle owned or operated by the probationer, at the probationer's expense;

(c) immediately notify the Driver License Division and the person's probation provider of the order; and

(d) require the probationer to provide proof of compliance with the court's order to the probation provider within 30 days of the order.

(4) (a) The probationer shall provide timely proof of installation within 30 days of an order imposing the use of a system or show cause why the order was not complied with to the court or to the probationer's probation provider.

(b) The probation provider shall notify the court of failure to comply under Subsection (4)(a).

(c) For failure to comply under Subsection (4)(a) or upon receiving the notification under Subsection (4)(b), the court shall order the Driver License Division to suspend the probationer's driving privileges for the remaining period during which the compliance was

183 imposed.

184 (d) Cause for failure to comply means any reason the court finds sufficiently justifiable
185 to excuse the probationer's failure to comply with the court's order.

186 (5) (a) Any probationer required to install an ignition interlock system shall have the
187 system monitored by the manufacturer or dealer of the system for proper use and accuracy at
188 least semiannually and more frequently as the court may order.

189 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the
190 court or the person's probation provider.

191 (ii) The report shall be issued within 14 days following each monitoring.

192 (6) (a) If an ignition interlock system is ordered installed, the probationer shall pay the
193 reasonable costs of leasing or buying and installing and maintaining the system.

194 (b) A probationer may not be excluded from this section for inability to pay the costs,
195 unless:

196 (i) the probationer files an affidavit of impecuniosity; and

197 (ii) the court enters a finding that the probationer is impecunious.

198 (c) In lieu of waiver of the entire amount of the cost, the court may direct the
199 probationer to make partial or installment payments of costs when appropriate.

200 (d) The ignition interlock provider shall cover the costs of waivers by the court under
201 this Subsection (6).

202 (7) (a) If a probationer is required in the course and scope of employment to operate a
203 motor vehicle owned by the probationer's employer, the probationer may operate that motor
204 vehicle without installation of an ignition interlock system only if:

205 (i) the motor vehicle is used in the course and scope of employment;

206 (ii) the employer has been notified that the employee is restricted; and

207 (iii) the employee has employer verification in the employee's possession while
208 operating the employer's motor vehicle.

209 (b) (i) To the extent that an employer-owned motor vehicle is made available to a
210 probationer subject to this section for personal use, no exemption under this section shall apply.

211 (ii) A probationer intending to operate an employer-owned motor vehicle for personal
212 use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock
213 system shall notify the employer and obtain consent in writing from the employer to install a

214 system in the employer-owned motor vehicle.

215 (c) A motor vehicle owned by a business entity that is all or partly owned or controlled
216 by a probationer subject to this section is not a motor vehicle owned by the employer and does
217 not qualify for an exemption under this Subsection (7).

218 (8) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
219 the commissioner shall make rules setting standards for the certification of ignition interlock
220 systems.

221 (b) The standards under Subsection (8)(a) shall require that the system:

222 (i) not impede the safe operation of the motor vehicle;

223 (ii) have features that make circumventing difficult and that do not interfere with the
224 normal use of the motor vehicle;

225 (iii) require a deep lung breath sample as a measure of breath alcohol concentration;

226 (iv) prevent the motor vehicle from being started if the driver's breath alcohol
227 concentration exceeds [~~a specified level~~] .02 grams or greater;

228 (v) work accurately and reliably in an unsupervised environment;

229 (vi) resist tampering and give evidence if tampering is attempted;

230 (vii) operate reliably over the range of motor vehicle environments; and

231 (viii) be manufactured by a party who will provide liability insurance.

232 (c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or
233 independent laboratory tests relied upon in certification of ignition interlock systems by other
234 states.

235 (d) A list of certified systems shall be published by the commissioner and the cost of
236 certification shall be borne by the manufacturers or dealers of ignition interlock systems
237 seeking to sell, offer for sale, or lease the systems.

238 (e) (i) In accordance with Section [63J-1-504](#), the commissioner may establish an
239 annual dollar assessment against the manufacturers of ignition interlock systems distributed in
240 the state for the costs incurred in certifying.

241 (ii) The assessment under Subsection (8)(e)(i) shall be apportioned among the
242 manufacturers on a fair and reasonable basis.

243 (f) The commissioner shall require a provider of an ignition interlock system certified
244 in accordance with this section to comply with the requirements of Title 53, Chapter 3, Part 10,

Ignition Interlock System Program Act.

(9) A violation of this section is a class C misdemeanor.

(10) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the state or its employees in connection with the installation, use, operation, maintenance, or supervision of an interlock ignition system as required under this section.

Section 3. Section **53-3-223** is amended to read:

53-3-223. Chemical test for driving under the influence -- Temporary license -- Hearing and decision -- Suspension and fee -- Judicial review.

(1) (a) If a peace officer has reasonable grounds to believe that a person may be violating or has violated Section [41-6a-502](#), prohibiting the operation of a vehicle with a certain blood or breath alcohol concentration and driving under the influence of any drug, alcohol, or combination of a drug and alcohol or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section [41-6a-517](#), the peace officer may, in connection with arresting the person, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section [41-6a-520](#).

(b) In this section, a reference to Section [41-6a-502](#) includes any similar local ordinance adopted in compliance with Subsection [41-6a-510](#)(1).

(2) The peace officer shall advise a person prior to the person's submission to a chemical test that a test result indicating a violation of Section [41-6a-502](#) or [41-6a-517](#) shall, and the existence of a blood alcohol content sufficient to render the person incapable of safely driving a motor vehicle may, result in suspension or revocation of the person's license to drive a motor vehicle.

(3) If the person submits to a chemical test and the test results indicate a blood or breath alcohol content in violation of Section [41-6a-502](#) or [41-6a-517](#), or if a peace officer makes a determination, based on reasonable grounds, that the person is otherwise in violation of Section [41-6a-502](#), a peace officer shall, on behalf of the division and within 24 hours of arrest, give notice of the division's intention to suspend the person's license to drive a motor vehicle.

(4) When a peace officer gives notice on behalf of the division, the peace officer shall supply to the driver, in a manner specified by the division, basic information regarding how to

276 obtain a prompt hearing before the division.

277 (5) As a matter of procedure, a peace officer shall send to the division within 10
278 calendar days after the day on which notice is provided:

279 (a) a copy of the citation issued for the offense;

280 (b) a signed report in a manner specified by the division indicating the chemical test
281 results, if any; and

282 (c) any other basis for the peace officer's determination that the person has violated
283 Section 41-6a-502 or 41-6a-517.

284 (6) (a) Upon request in a manner specified by the division, the division shall grant to
285 the person an opportunity to be heard within 29 days after the date of arrest. The request to be
286 heard shall be made within 10 calendar days of the day on which notice is provided under
287 Subsection (5).

288 (b) (i) Except as provided in Subsection (6)(b)(ii), a hearing, if held, shall be before the
289 division in:

290 (A) the county in which the arrest occurred; or

291 (B) a county that is adjacent to the county in which the arrest occurred.

292 (ii) The division may hold a hearing in some other county if the division and the person
293 both agree.

294 (c) The hearing shall be documented and shall cover the issues of:

295 (i) whether a peace officer had reasonable grounds to believe the person was driving a
296 motor vehicle in violation of Section 41-6a-502 or 41-6a-517;

297 (ii) whether the person refused to submit to the test; and

298 (iii) the test results, if any.

299 (d) (i) In connection with a hearing the division or its authorized agent:

300 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and
301 the production of relevant books and papers; or

302 (B) may issue subpoenas for the attendance of necessary peace officers.

303 (ii) The division shall pay witness fees and mileage from the Transportation Fund in
304 accordance with the rates established in Section 78B-1-119.

305 (e) The division may designate one or more employees to conduct the hearing.

306 (f) Any decision made after a hearing before any designated employee is as valid as if

made by the division.

(7) (a) If, after a hearing, the division determines that a peace officer had reasonable grounds to believe that the person was driving a motor vehicle in violation of Section 41-6a-502 or 41-6a-517, if the person failed to appear before the division as required in the notice, or if a hearing is not requested under this section, the division shall:

(i) if the person is 21 years ~~[of age]~~ old or older at the time of arrest, suspend the person's license or permit to operate a motor vehicle for a period of:

(A) 120 days beginning on the 45th day after the date of arrest for a first suspension; or

(B) two years beginning on the 45th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or

(ii) if the person is under 21 years ~~[of age]~~ old at the time of arrest:

(A) suspend the person's license or permit to operate a motor vehicle:

(I) for a period of six months, beginning on the 45th day after the date of arrest for a first suspension; or

(II) until the person is 21 years ~~[of age]~~ old or for a period of two years, whichever is longer, beginning on the 45th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years; or

(B) deny the person's application for a license or learner's permit:

(I) for a period of six months beginning on the 45th day after the date of the arrest for a first suspension, if the person has not been issued an operator license; or

(II) until the person is 21 years ~~[of age]~~ old or for a period of two years, whichever is longer, beginning on the 45th day after the date of arrest for a second or subsequent suspension for an offense that occurred within the previous 10 years.

(b) (i) Notwithstanding the provisions in Subsection (7)(a)(i)(A), the division shall reinstate a person's license prior to completion of the 120 day suspension period imposed under Subsection (7)(a)(i)(A):

(A) immediately upon receiving written verification of the person's dismissal of a charge for a violation of Section 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the suspension period; or

(B) no sooner than 60 days beginning on the 45th day after the date of arrest upon receiving written verification of the person's reduction of a charge for a violation of Section

338 41-6a-502 or 41-6a-517, if the written verification is received prior to completion of the
339 suspension period.

340 (ii) Notwithstanding the provisions in Subsection (7)(a)(i)(A), the division shall
341 reinstate a person's license prior to completion of the 120-day suspension period imposed under
342 Subsection (7)(a)(i)(A) immediately upon receiving written verification of the person's
343 conviction of impaired driving under Section 41-6a-502.5 if:

344 (A) the written verification is received prior to completion of the suspension period;
345 and

346 (B) the reporting court notifies the Driver License Division that the defendant is
347 participating in or has successfully completed the program of a driving under the influence
348 court as defined in Section 41-6a-501.

349 (iii) If a person's license is reinstated under this Subsection (7)(b), the person is
350 required to pay the license reinstatement fees under Subsections [~~53-3-105(24) and (25)~~]
351 53-3-105(26) and (27).

352 (iv) The driver license reinstatements authorized under this Subsection (7)(b) only
353 apply to a 120 day suspension period imposed under Subsection (7)(a)(i)(A).

354 (8) (a) The division shall assess against a person, in addition to any fee imposed under
355 Subsection 53-3-205(12) for driving under the influence, a fee under Section 53-3-105 to cover
356 administrative costs, which shall be paid before the person's driving privilege is reinstated.
357 This fee shall be cancelled if the person obtains an unappealed division hearing or court
358 decision that the suspension was not proper.

359 (b) A person whose license has been suspended by the division under this section
360 following an administrative hearing may file a petition within 30 days after the suspension for a
361 hearing on the matter which, if held, is governed by Section 53-3-224.

362 (9) (a) Notwithstanding the provisions in Subsection (7)(a)(i) or (ii), the division shall
363 reinstate a person's license before completion of the suspension period imposed under
364 Subsection (7)(a)(i) or (ii) if the reporting court notifies the Driver License Division that the
365 defendant is participating in or has successfully completed a 24-7 sobriety program as defined
366 in Section 41-6a-515.5.

367 (b) If a person's license is reinstated under Subsection (9)(a), the person is required to
368 pay the license reinstatement fees under Subsections [~~53-3-105(24) and (25)~~] 53-3-105(26) and

369 (27).

370 (10) (a) If the division suspends a person's license for an alcohol related offense, and if
371 the offense is the person's first offense, the person may elect to become an interlock restricted
372 driver and install an ignition interlock device in each vehicle driven by the person in lieu of
373 receiving the license suspension.

374 (b) To qualify as an interlock restricted driver in lieu of suspension, the person shall:

375 (i) install an ignition interlock device in any vehicle driven by the person and keep the
376 ignition interlock device installed in any vehicle driven by the person for the same time period
377 as the prescribed license suspension;

378 (ii) provide proof of installation to the division;

379 (iii) pay the costs of leasing or buying and installing and maintaining the ignition
380 interlock device; and

381 (iv) pay the license reinstatement application fees described in Subsections
382 53-3-105(26) and (27).