

**UTAH JUDICIAL COUNCIL  
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS  
MEETING AGENDA**

Via Hybrid Meeting – Matheson Courthouse and Webex  
March 6<sup>th</sup>, 2024 – 12:00 p.m. to 1:30 p.m.

|       |   |  |       |                             |
|-------|---|--|-------|-----------------------------|
| 12:00 | Welcome and Approval of Minutes   |  | Tab 1 | Judge Welch                 |
|       | Discussion: Failure to Respond to an Officer's Signal to Stop Instruction (Misdemeanor)             |  |       | Judge Welch/McKay Lewis     |
|       | Discussion: Driving With a Measurable Controlled Substance Instruction (CR1006)                     |  | Tab 2 | Judge Welch/McKay Lewis     |
|       | Discussion: Negligently Operating a Vehicle Resulting in Bodily Injury Instruction                  |  | Tab 3 | Judge Welch/McKay Lewis     |
|       | Discussion: Unanimity on DUI Alternatives/SVF/Refusal to submit blood test                          |  | Tab 4 | Judge Welch/Judge McCullagh |
|       | Discussion: Update on General Adverse Instruction Research/Discussion of Future or Ongoing Projects |  |       | Judge Welch                 |
| 1:30  | Adjourn   |  |       |                             |

**COMMITTEE WEB PAGE:** <https://www.utcourts.gov/utc/muji-criminal/>

**UPCOMING MEETING SCHEDULE:**

Meetings are held via Webex on the first Wednesday of each month from 12:00 noon to 1:30 p.m. (unless otherwise specifically noted):

- April 3<sup>rd</sup>, 2024
- May 1<sup>st</sup>, 2024
- June 5<sup>th</sup>, 2024
- July 3<sup>rd</sup>, 2024
- August 7<sup>th</sup>, 2024
- September 4<sup>th</sup>, 2024
- October 2<sup>nd</sup>, 2024
- November 6<sup>th</sup>, 2024
- December 4<sup>th</sup>, 2024

# **TAB 1**

**Meeting Minutes – February 7th, 2024**

**UTAH JUDICIAL COUNCIL  
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS  
MEETING MINUTES**

Via Webex  
February 7, 2023 – 12:00 p.m. to 1:30 p.m.

**DRAFT**

| COMMITTEE MEMBER:      | ROLE:                             | PRESENT | EXCUSED | GUESTS:       |
|------------------------|-----------------------------------|---------|---------|---------------|
| Hon. Teresa Welch      | District Court Judge [Chair]      | •       |         | None          |
| Hon. Brendan McCullagh | Justice Court Judge               | •       |         |               |
| Jennifer Andrus        | Linguist/Communications Professor |         | •       | <b>STAFF:</b> |
| Hon. Linda Jones       | Emeritus District Court Judge     | •       |         | Bryson King   |
| Hon. Matthew Bates     | District Court Judge              | •       |         |               |
| Sharla Dunroe          | Defense Attorney                  |         | •       |               |
| Janet Lawrence         | Defense Attorney                  | •       |         |               |
| Jeffrey Mann           | Prosecutor                        | •       |         |               |
| Richard Pehrson        | Prosecutor                        | •       |         |               |
| Dustin Parmley         | Defense Attorney                  | •       |         |               |
| Freyja Johnson         | Defense Attorney                  | •       |         |               |
| McKay Lewis            | Prosecutor                        | •       |         |               |
| Nic Mills              | Prosecutor                        | •       |         |               |

**(1) WELCOME AND APPROVAL OF MINUTES:**

Judge Welch welcomed the committee to the meeting. The Committee reviewed the minutes from its last meeting and, without objection, voted to approve.

**(2) AGENDA ITEM 2: FAILURE TO RESPOND TO AN OFFICER’S SIGNAL TO STOP INSTRUCTION (CR1102 & CR1103)**

Judge Welch then asked Judge Jones to introduce her proposed instruction for Failure to Respond to an Officer’s Signal to Stop. Judge Jones indicates that the case law supports two separate instructions, one for the 3<sup>rd</sup> degree felony offense for failure to stop, and a separate instruction for the 2<sup>nd</sup> degree felony offense. Judge Welch reviews language from *State v. Bird* that supports the separate instructions and the language included in them. Judge Bates requests the Committee discuss the mens rea language, “intentionally” in the instruction in paragraph 4, and whether it applies to subparts a and b. After discussion the Committee agrees to remove the word “intentionally,” and leave the mens rea standard in 4b. Th Committee discusses included additional case law and statute references in the instructions. Judge McCullagh then suggests amending the language to state “willful or wanton” instead of “willful and wanton” in paragraph 4a. The Committee also discusses including a note regarding unanimity, with a reference to CR430. Additional discussion ensues about developing the Committee Note for the 2<sup>nd</sup> degree felony, but ultimately votes to remove language that references the 5<sup>th</sup> element of that instruction. The Committee then discusses what to number the instructions and decides to

number them CR1102 for the 3<sup>rd</sup> degree felony and CR1103 for the 2<sup>nd</sup> degree felony. McKay Lewis will work on a proposed instruction for the misdemeanor-level offense.

**(3) AGENDA ITEM 3: DRIVING WITH A MEASURABLE CONTROLLED SUBSTANCE**

McKay Lewis begins discussing his proposed instruction for Driving with a Measurable Controlled Substance in the Body, CR1006. McKay reviews the elements along with the supporting statute, Utah Code 41-6a-517. He also briefly reviews *State v. Outzen*'s language and its influence on the instruction. Judge McCullough draws the Committee's attention to affirmative defenses, included the carve out in 41-6a-517(2)(b). The Committee adds language into the instruction regarding the affirmative defense from the statute. The Committee will resume its work on the instruction at the next meeting.

**(4) ADJOURN**

The Committee reviews its meeting schedule and cancels the July meeting due to the holiday. The meeting adjourned at approximately 1:30 p.m. The next meeting will be held on March 6th, 2024, starting at 12:00 noon.

# **TAB 2**

**CR1006 - Driving with a Measurable  
Controlled Substance Instruction**

## CR1006: Driving with any Measurable Controlled Substance in the Body

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Driving with any Measurable Controlled Substance in the Body [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
2. Did operate or was in actual physical control of a vehicle; and
3. Had any measurable amount of a controlled substance or any metabolite of a controlled substance in [his] [her] body; [and
4. The controlled substance was not:
  - (a) involuntarily ingested;
  - (b) prescribed by a practitioner for use;
  - (c) cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form;
  - (d) otherwise legally ingested.]

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

### References:

- Utah Code Ann. § 41-6a-517(2)(a)
- Utah Code Ann. § 76-2-101(2)
- *State v. Outzen*, 2017 UT 30, 408 P.3d 334

### Committee Notes:

Practitioners are encouraged to use CR1201 to define “controlled substance.” This instruction is intended to be used in prosecuting **Class B Misdemeanor** Driving with any Measurable Controlled Substance in the Body. For Driving Under the Influence—as found in Utah Code Ann. § 41-6a-502—instructions, use CR1003, CR1004, or CR1005, respectively.

Similar to the offense of Driving Under the Influence, Driving with any Measurable Controlled Substance in the Body is a strict liability offense. See Utah Code Ann. § 76-2-101(2) (no mental state generally required for traffic offenses). But in contrast to Driving Under the Influence, Driving with any Measurable Controlled Substance in the Body does not require proof of impairment. See *State v. Outzen*, 2017 UT 30, ¶¶ 7–12, 408 P.3d 334.

**Effective 5/3/2023**

**41-6a-517 Definitions -- Driving with any measurable controlled substance in the body -- Penalties -- Arrest without warrant.**

- (1) As used in this section:
  - (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.
  - (b) "Practitioner" means the same as that term is defined in Section 58-37-2.
  - (c) "Prescribe" means the same as that term is defined in Section 58-37-2.
  - (d) "Prescription" means the same as that term is defined in Section 58-37-2.
- (2)
  - (a) Except as provided in Subsection (2)(b), in cases not amounting to a violation of Section 41-6a-502, 76-5-102.1, or 76-5-207, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.
  - (b) Subsection (2)(a) does not apply to a person that has 11-nor-9-carboxy-tetrahydrocannabinol as the only controlled substance present in the person's body.
- (3) It is an affirmative defense to prosecution under this section that the controlled substance was:
  - (a) involuntarily ingested by the accused;
  - (b) prescribed by a practitioner for use by the accused;
  - (c) cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form that the accused ingested in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or
  - (d) otherwise legally ingested.
- (4)
  - (a) A person convicted of a violation of Subsection (2) is guilty of a class B misdemeanor.
  - (b) A person who violates this section is subject to conviction and sentencing under both this section and any applicable offense under Section 58-37-8.
- (5) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in the officer's presence, and if the officer has probable cause to believe that the violation was committed by the person.
- (6) The Driver License Division shall, if the person is 21 years old or older on the date of arrest:
  - (a) suspend, for a period of 120 days, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2009; or
  - (b) revoke, for a period of two years, the driver license of a person if:
    - (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
    - (ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and within a period of 10 years after the date of the prior violation.
- (7) The Driver License Division shall, if the person is 19 years old or older but under 21 years old on the date of arrest:
  - (a) suspend, until the person is 21 years old or for a period of one year, whichever is longer, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2011; or
  - (b) revoke, until the person is 21 years old or for a period of two years, whichever is longer, the driver license of a person if:
    - (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
    - (ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and within a period of 10 years after the date of the prior violation.
- (8) The Driver License Division shall, if the person is under 19 years old on the date of arrest:

- (a) suspend, until the person is 21 years old, the driver license of a person convicted under Subsection (2) of an offense committed on or after July 1, 2009; or
- (b) revoke, until the person is 21 years old, the driver license of a person if:
  - (i) the person has a prior conviction as defined under Subsection 41-6a-501(2); and
  - (ii) the current violation under Subsection (2) is committed on or after July 1, 2009, and within a period of 10 years after the date of the prior violation.
- (9) The Driver License Division shall subtract from any suspension or revocation period the number of days for which a license was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based on the same occurrence upon which the record of conviction is based.
- (10) The Driver License Division shall:
  - (a) deny, suspend, or revoke a person's license for the denial and suspension periods in effect prior to July 1, 2009, for a conviction of a violation under Subsection (2) that was committed prior to July 1, 2009; or
  - (b) deny, suspend, or revoke the operator's license of a person for the denial, suspension, or revocation periods in effect from July 1, 2009, through June 30, 2011, if:
    - (i) the person was 20 years old or older but under 21 years old at the time of arrest; and
    - (ii) the conviction under Subsection (2) is for an offense that was committed on or after July 1, 2009, and prior to July 1, 2011.
- (11) A court that reported a conviction of a violation of this section for a violation that occurred on or after July 1, 2009, to the Driver License Division may shorten the suspension period imposed under Subsection (7)(a) or (8)(a) prior to completion of the suspension period if the person:
  - (a) completes at least six months of the license suspension;
  - (b) completes a screening;
  - (c) completes an assessment, if it is found appropriate by a screening under Subsection (11)(b);
  - (d) completes substance abuse treatment if it is found appropriate by the assessment under Subsection (11)(c);
  - (e) completes an educational series if substance abuse treatment is not required by the assessment under Subsection (11)(c) or the court does not order substance abuse treatment;
  - (f) has not been convicted of a violation of any motor vehicle law in which the person was involved as the operator of the vehicle during the suspension period imposed under Subsection (7)(a) or (8)(a);
  - (g) has complied with all the terms of the person's probation or all orders of the court if not ordered to probation; and
  - (h)
    - (i) is 18 years old or older and provides a sworn statement to the court that the person has not consumed a controlled substance not prescribed by a practitioner for use by the person or unlawfully consumed alcohol during the suspension period imposed under Subsection (7)(a) or (8)(a); or
    - (ii) is under 18 years old and has the person's parent or legal guardian provide an affidavit or other sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not consumed a controlled substance not prescribed by a practitioner for use by the person or unlawfully consumed alcohol during the suspension period imposed under Subsection (7)(a) or (8)(a).
- (12) If the court shortens a person's license suspension period in accordance with the requirements of Subsection (11), the court shall forward the order shortening the person's license suspension period to the Driver License Division in a manner specified by the division prior to the completion of the suspension period imposed under Subsection (7)(a) or (8)(a).

(13)

- (a) The court shall notify the Driver License Division if a person fails to complete all court ordered screening and assessment, educational series, and substance abuse treatment.
- (b) Subject to Subsection 53-3-218(3), upon receiving the notification, the division shall suspend the person's driving privilege in accordance with Subsection 53-3-221(2).

(14) The court:

- (a) shall order supervised probation in accordance with Section 41-6a-507 for a person convicted under Subsection (2); and
- (b) may order a person convicted under Subsection (2) to participate in a 24-7 sobriety program as defined in Section 41-6a-515.5 if the person is 21 years old or older.

(15)

- (a) A court that reported a conviction of a violation of this section to the Driver License Division may shorten the suspension period imposed under Subsection (6) before completion of the suspension period if the person is participating in or has successfully completed a 24-7 sobriety program as defined in Section 41-6a-515.5.
- (b) If the court shortens a person's license suspension period in accordance with the requirements of this Subsection (15), the court shall forward to the Driver License Division, in a manner specified by the division, the order shortening the person's suspension period.
- (c) The court shall notify the Driver License Division, in a manner specified by the division, if a person fails to complete all requirements of a 24-7 sobriety program.

(d)

(i)

- (A) Upon receiving the notification described in Subsection (15)(c), for a first offense, the division shall suspend the person's driving privilege for a period of 120 days from the date of notice.
- (B) For a suspension described in Subsection (15)(d)(i)(A), no days shall be subtracted from the 120-day suspension period for which a driving privilege was suspended under this section or under Section 53-3-223, if the previous suspension was based on the same occurrence upon which the conviction under this section is based.

(ii)

- (A) Upon receiving the notification described in Subsection (15)(c), for a second or subsequent offense, the division shall revoke the person's driving privilege for a period of two years from the date of notice.
- (B) For a revocation described in Subsection (15)(d)(ii)(A), no days shall be subtracted from the two-year revocation period for which a driving privilege was previously revoked under this section or under Section 53-3-223, if the previous revocation was based on the same occurrence upon which the conviction under this section is based.

Amended by Chapter 328, 2023 General Session

# **TAB 3**

**Negligently Operating a Vehicle Resulting in  
Bodily Injury Instruction**

## Draft Instruction for Negligently Operating a Vehicle Resulting in Injury

### Proposed Instruction:

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_ ] with committing Negligently Operating a Vehicle Resulting in Injury [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. (DEFENDANT'S NAME);
  - a. Operated a vehicle in a negligent manner; and
  - b. Caused [serious] bodily injury to another; and
2. (DEFENDANT'S NAME):
  - a. [Had sufficient alcohol in [his] [her] body that a subsequent chemical test showed that [he] [she] had a blood or breath alcohol concentration of .05 grams or greater at the time of the test;]
  - b. [Was under the influence of [alcohol] [a drug] [the combined influence of alcohol and a drug] to a degree that rendered [him] [her] incapable of safely operating a vehicle;] or
  - c. [Had a blood or breath alcohol concentration of .05 grams or greater at the time of operation;] or
3. (DEFENDANT'S NAME);
  - a. Operated a vehicle in a criminally negligent manner; and
  - b. Caused [serious] bodily injury to another; and

4. (DEFENDANT'S NAME):

- a. Had in [his] [her] body any measurable amount of a controlled substance.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

References:

- Utah Code Ann. § 76-5-102.1(2)

Relevant Definitions:

- Negligence: *see* CR305.
- Criminal Negligence: *see* CR306A, CR306B, and CR307.
- Bodily Injury “means physical pain, illness, or any impairment of physical condition.” *See* Utah Code Ann. § 76-1-101.5(4).
- Serious Bodily Injury “means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.” *See* Utah Code Ann. § 76-1-101.5(17).

Notes:

This instruction is intended to be used in prosecuting the crime of Negligently Operating a Vehicle Resulting in Injury. Whether that offense constitutes a Class A Misdemeanor or a Third-Degree Felony depends on whether the Defendant caused bodily injury or serious bodily injury to another. *See* Utah Code Ann. § 76-5-102.1(3). Practitioners should use the bracketed [serious] language accordingly.

For the definition of “negligent,” see CR305. For the definition of “criminally negligent,” see CR306A, CR306B, and CR307.

**Effective 5/3/2023**

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

- (1)
  - (a) As used in this section:
    - (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.
    - (ii) "Drug" means the same as that term is defined in Section 76-5-207.
    - (iii) "Negligent" or "negligence" means the same as that term is defined in Section 76-5-207.
    - (iv) "Vehicle" means the same as that term is defined in Section 41-6a-501.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits negligently operating a vehicle resulting in injury if the actor:
  - (a)
    - (i) operates a vehicle in a negligent manner causing bodily injury to another; and
    - (ii)
      - (A) has sufficient alcohol in the actor's body such that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;
      - (B) is under the influence of alcohol, a drug, or the combined influence of alcohol and a drug to a degree that renders the actor incapable of safely operating a vehicle; or
      - (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation; or
  - (b)
    - (i) operates a vehicle in a criminally negligent manner causing bodily injury to another; and
    - (ii) has in the actor's body any measurable amount of a controlled substance.
- (3) Except as provided in Subsection (4), a violation of Subsection (2) is:
  - (a)
    - (i) a class A misdemeanor; or
    - (ii) a third degree felony if the bodily injury is serious bodily injury; and
  - (b) a separate offense for each victim suffering bodily injury as a result of the actor's violation of this section, regardless of whether the injuries arise from the same episode of driving.
- (4) An actor is not guilty of negligently operating a vehicle resulting in injury under Subsection (2) (b) if:
  - (a) the controlled substance was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the practitioner's professional practice, or as otherwise authorized by Title 58, Occupations and Professions;
  - (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or
  - (c) the actor possessed, in the actor's body, a controlled substance listed in Section 58-37-4.2 if:
    - (i) the actor is the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and
    - (ii) the substance was administered to the actor by the medical researcher.
- (5)
  - (a) A judge imposing a sentence under this section may consider:
    - (i) the sentencing guidelines developed in accordance with Section 63M-7-404;
    - (ii) the defendant's history;
    - (iii) the facts of the case;
    - (iv) aggravating and mitigating factors; or
    - (v) any other relevant fact.
  - (b) The judge may not impose a lesser sentence than would be required for a conviction based on the defendant's history under Section 41-6a-505.

- (c) The standards for chemical breath analysis under Section 41-6a-515 and the provisions for the admissibility of chemical test results under Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.
- (d) A calculation of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(3).
- (e) Except as provided in Subsection (4), the fact that an actor charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.
- (f) Evidence of a defendant's blood or breath alcohol content or drug content is admissible except if prohibited by the Utah Rules of Evidence, the United States Constitution, or the Utah Constitution.
- (g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense described in this section may not be held in abeyance.

Amended by Chapter 111, 2023 General Session

Amended by Chapter 415, 2023 General Session

# **TAB 4**

**Unanimity on DUI Alternatives/SVF/Refusal  
to Submit Blood Test**

Unanimity around alternative ways to prove a violation of 41-6a-502 (DUI).

The defendant is charged with operating, or being in actual physical control of, a vehicle while:

1. Being under the influence of alcohol; or
2. Having sufficient alcohol in their body that a subsequent test showed that the defendant had a blood or breath alcohol concentration of .05 grams or greater at the time of the test.
3. [Having a blood or breath alcohol concentration of .05 grams or greater at the time of the operation or actual physical control.] [rare option]

These are separate considerations. To find the defendant guilty, you must unanimously agree on at least one of those above alternatives. Should you find the defendant guilty you must also fill out the special verdict form indicating which alternatives you had unanimity on. There must be at least one.

SPECIAL VERDICT FORM For which alternative method of DUI.

We the Jury, in finding (Defendant's name) GUILTY of Count \_\_, find unanimously, and beyond a reasonable doubt, that the defendant:

\_\_\_\_\_ was under the influence of alcohol and/or any other drug to a degree that he/she was incapable of safely operating the vehicle.

\_\_\_\_\_ had sufficient alcohol in their body at the time of operating or being in actual physical control of the vehicle, that a subsequent chemical test showed the defendant had a blood or breath alcohol concentration of .05 grams or greater at the time of the test.

\_\_\_\_\_ operated or was in actual physical control of a vehicle with a blood or breath alcohol concentration of .05 grams or greater.

-----  
Jury Foreperson

SPECIAL VERDICT FORM FOR THE MYRIAD ADD-ONS THAT INCREASE THE OFFENSE LEVEL (TOP) OR MINIMUM MANDATORY SENTENCING (BOTTOM)

We the jury having found the defendant guilty of Count # \_\_\_ [or violating Utah Code Ann 41-6a-502 (the DUI Statute)][ we don't usually do it this way, but it's a lot cleaner than the whole statute title)], find unanimously and beyond a reasonable doubt the following:

Foreperson initial next to each that you do find. If you find none, initial the last box "None."  
Verdict form must also be signed by the foreperson on behalf of the jury.

[Factors that increase the level of offense]

\_\_\_ when committing the offense, the defendant had a passenger younger than 16 years old in the vehicle at the time of the offense.

\_\_\_ when committing the offense, the defendant was at least 21 years of age and had a passenger younger than 18 years of age in the vehicle.

\_\_\_ when committing the offense, the defendant also violated 41-6a-712 or 714 regarding Divided Highways [if those violations are charged in the information. If not, a longer special verdict form outlining all the elements of those offenses will need to be used.]

\_\_\_ Within ten years of [[the date defendant committed this offense] or [today's date]], the defendant had a prior conviction as defined in Instruction # \_\_\_\_\_.

\_\_\_ Within ten years of [[the date defendant committed this offense] or [today's date]], the defendant has two or more prior convictions as defined in Instruction # \_\_\_\_\_.

\_\_\_ The defendant has a prior felony conviction as defined in Instruction # \_\_\_\_\_.

[Factors that increase the minimum sentence a court must impose]

When committing the offense, the defendant had:

\_\_\_ a blood or breath alcohol level of .16 or higher;

\_\_\_ a blood or breath alcohol level of .05 or higher AND a measured amount of a controlled substance in his/her body that was not [recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis] or [prescribed].

\_\_\_ two or more controlled substances in his/her body that were not [recommended in accordance with Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis] or [prescribed].

(DEFENDANT'S NAME) is charged [in Count \_\_\_\_] with committing Criminal Refusal to submit to a Blood test [on or about (DATE)]. You cannot convict [him] [her] of this offense unless, based on the evidence, you find beyond a reasonable doubt each of the following elements:

1. The defendant was under arrest;
2. A peace officer had requested the defendant to submit to a chemical test or tests;
3. The defendant refused that request;
4. The peace officer warned the defendant that refusal to submit to the test or tests may result in:
  - a. criminal prosecution;
  - b. revocation of the defendant's driver license;
  - c. a five or ten year prohibition of driving with any measurable or detectable amount of alcohol in [his/her] body on the defendant's driving history; and
  - d. a three-year prohibition of driving without an ignition interlock device.
5. A judge had issued a warrant allowing seizure of a sample of the defendant's blood; and
6. After being presented with evidence of that warrant, the defendant refused another request by an officer to submit to a test of the defendant's blood.

After you carefully consider all the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant GUILTY. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant NOT GUILTY.

**Effective 5/3/2023**

**41-6a-502 Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration -- Penalties -- Reporting of convictions.**

- (1) An actor commits driving under the influence if the actor operates or is in actual physical control of a vehicle within this state if the actor:
  - (a) has sufficient alcohol in the actor's body that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;
  - (b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the actor incapable of safely operating a vehicle; or
  - (c) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation or actual physical control.
- (2)
  - (a) A violation of Subsection (1) is a class B misdemeanor.
  - (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A misdemeanor if the actor:
    - (i) has a passenger younger than 16 years old in the vehicle at the time of the offense;
    - (ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle at the time of the offense;
    - (iii) the actor also violated Section 41-6a-712 or 41-6a-714 at the time of the offense; or
    - (iv) has one prior conviction within 10 years of:
      - (A) the current conviction under Subsection (1); or
      - (B) the commission of the offense upon which the current conviction is based.
  - (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree felony if:
    - (i) the actor has two or more prior convictions each of which is within 10 years of:
      - (A) the current conviction; or
      - (B) the commission of the offense upon which the current conviction is based; or
    - (ii) the current conviction is at any time after a conviction of:
      - (A) a violation of Section 76-5-207;
      - (B) a felony violation of this section, Section 76-5-102.1, 41-6a-520.1, or a statute previously in effect in this state that would constitute a violation of this section; or
      - (C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of conviction is reduced under Section 76-3-402.
- (3) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.
- (4) A violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6a-510.
- (5) A court shall, monthly, send to the Division of Professional Licensing, created in Section 58-1-103, a report containing the name, case number, and, if known, the date of birth of each person convicted during the preceding month of a violation of this section for whom there is evidence that the person was driving under the influence, in whole or in part, of a prescribed controlled substance.
- (6) An offense described in this section is a strict liability offense.
- (7) A guilty or no contest plea to an offense described in this section may not be held in abeyance.
- (8) An actor is guilty of a separate offense under Subsection (1) for each passenger in the vehicle that is younger than 16 years old at the time of the offense.

Amended by Chapter 415, 2023 General Session



**Effective 5/3/2023**

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

- (1) An actor commits refusing a chemical test if:
  - (a) a peace officer issues the warning required in Subsection 41-6a-520(2)(a);
  - (b) a court issues a warrant to draw and test the blood; and
  - (c) after Subsections (1)(a) and (b), the actor refuses to submit to a test of the actor's blood.
- (2)
  - (a) A violation of Subsection (1) is a class B misdemeanor.
  - (b) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a class A misdemeanor if the actor:
    - (i) has a passenger younger than 16 years old in the vehicle at the time the officer had grounds to believe the actor was driving under the influence;
    - (ii) is 21 years old or older and has a passenger younger than 18 years old in the vehicle at the time the officer had grounds to believe the actor was driving under the influence;
    - (iii) also violated Section 41-6a-712 or 41-6a-714 at the time of the offense; or
    - (iv) has one prior conviction within 10 years of:
      - (A) the current conviction under Subsection (1); or
      - (B) the commission of the offense upon which the current conviction is based.
  - (c) Notwithstanding Subsection (2)(a), a violation of Subsection (1) is a third degree felony if:
    - (i) the actor has two or more prior convictions, each of which is within 10 years of:
      - (A) the current conviction; or
      - (B) the commission of the offense upon which the current conviction is based; or
    - (ii) the current conviction is at any time after a conviction of:
      - (A) a violation of Section 76-5-207;
      - (B) a felony violation of this section, Section 76-5-102.1, 41-6a-502, or a statute previously in effect in this state that would constitute a violation of this section; or
      - (C) any conviction described in Subsection (2)(c)(ii)(A) or (B) which judgment of conviction is reduced under Section 76-3-402.
- (3) As part of any sentence for a conviction of violating this section, the court shall impose the same sentencing as outlined for driving under the influence violations in Section 41-6a-505, based on whether this is a first, second, or subsequent conviction, with the following modifications:
  - (a) any jail sentence shall be 24 consecutive hours more than is required under Section 41-6a-505;
  - (b) any fine imposed shall be \$100 more than is required under Section 41-6a-505; and
  - (c) the court shall order 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 as a condition of probation for the individual; or
    - (iii) the imposition of home confinement through the use of electronic monitoring, in accordance with Section 41-6a-506.
- (4)
  - (a) The offense of refusing a chemical test under this section does not merge with any violation of Section 32B-4-409, 41-6a-502, 41-6a-517, or 41-6a-530.
  - (b) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense of refusal to submit to a chemical test under this section may not be held in abeyance.

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

Enacted by Chapter 415, 2023 General Session