

# UTAH DUI STATUTORY OVERVIEW<sup>1</sup>

(Current as of May 4, 2021)

| Court-Ordered Sentencing  | MISDEMEANOR DUI   |   |  |  |
|---|---|---|--|--|
|   | FIRST CONVICTION  | FIRST CONVICTION  | SECOND CONVICTION WITHIN 10 YEARS  | SECOND CONVICTION WITHIN 10 YEARS  |
| <b>CLASSIFICATION</b><br>(§41-6a-503)   | <b>CLASS B MISDEMEANOR</b><br><br><b>CLASS A MISDEMEANOR:</b> <ul style="list-style-type: none"> <li>if bodily injury<sup>3</sup></li> <li>if passenger is under 16<sup>4</sup></li> <li>if passenger is under 18 and driver is 21 or older</li> <li>if driving in the wrong direction on a freeway or controlled-access highway</li> </ul> | <b>CLASS B MISDEMEANOR</b><br><br><b>CLASS A MISDEMEANOR:</b> <ul style="list-style-type: none"> <li>if bodily injury<sup>3</sup></li> <li>if passenger is under 16<sup>4</sup></li> <li>if passenger is under 18 and driver is 21 or older</li> <li>if driving in the wrong direction on a freeway or controlled-access highway</li> </ul> | <b>CLASS B MISDEMEANOR</b><br><br><b>CLASS A MISDEMEANOR:</b> <ul style="list-style-type: none"> <li>if bodily injury<sup>3</sup></li> <li>if passenger under 16<sup>4</sup></li> <li>if passenger is under 18 and driver is 21 or older</li> <li>if driving in the wrong direction on a freeway or controlled-access highway</li> </ul>   | <b>CLASS B MISDEMEANOR CLASS A MISDEMEANOR:</b> <ul style="list-style-type: none"> <li>if bodily injury<sup>3</sup></li> <li>if passenger is under 16<sup>4</sup></li> <li>if passenger is under 18 and driver is 21 or older</li> <li>if driving in the wrong direction on a freeway or controlled-access highway</li> </ul>  |
| <b>Jail</b><br>(§41-6a-505)   | <b>SHALL</b> order:<br>2 days <b>OR</b> 48 hours compensatory service<br><b>MAY:</b><br>Suspend jail time if individual is participating in 24/7 sobriety program. <sup>6</sup>   | <b>SHALL</b> order not less than: <ul style="list-style-type: none"> <li>5 days <b>OR</b></li> <li>2 days <b>AND</b> 30 days consecutive electronic home confinement<sup>4</sup> that includes substance abuse testing</li> </ul> <b>MAY:</b><br>Suspend jail time if individual is participating in 24/7 sobriety program. <sup>6</sup>    | <b>SHALL</b> order not less than: <ul style="list-style-type: none"> <li>10 days <b>OR</b></li> <li>5 days <b>AND</b> 30 days electronic home confinement<sup>4</sup> that includes substance abuse testing</li> </ul> <b>MAY:</b><br>Suspend jail time if individual is participating in 24/7 sobriety program <b>AND</b> serves: <ul style="list-style-type: none"> <li>5 days jail for a second offense or</li> <li>10 days jail for third/subsequent offense.<sup>6</sup></li> </ul> | <b>SHALL</b> order: <ul style="list-style-type: none"> <li>Not less than 20 days jail <b>OR</b></li> <li>10 days jail <b>AND</b> 60 consecutive days electronic home confinement<sup>4</sup> that includes substance abuse testing <b>OR</b></li> <li>Not less than 10 days jail <b>AND</b> substance abuse tx (if tx is more likely to reduce recidivism and is in interest of public safety)</li> </ul> <b>MAY:</b><br>Suspend jail time if individual is participating in 24/7 sobriety program <b>AND</b> serves: <ul style="list-style-type: none"> <li>5 days jail for a second offense; or</li> <li>10 days jail for third/subsequent offense.<sup>6</sup></li> </ul> |
| <b>Fine, Surcharge, and Court Security Fee</b><br>(§41-6a-505)<br>(§51-9-401)   | <b>SHALL</b> order:<br>\$700 minimum fine plus a \$630 surcharge plus a \$60 court security fee (justice court) or \$53 (district court)  | <b>SHALL</b> order:<br>\$700 minimum fine plus a \$630 surcharge plus a \$60 court security fee (justice court) or \$53 (district court)  | <b>SHALL</b> order:<br>\$800 minimum fine plus a \$720 surcharge plus a \$60 court security fee (justice court) or \$53 (district court)   | <b>SHALL</b> order:<br>\$800 minimum fine plus a \$720 surcharge plus a \$60 court security fee (justice court) or \$53 (district court)   |
| <b>Screening, Assessment, Educational Series, and Treatment</b><br>(§41-6a-505) | <b>SHALL</b> order: <ul style="list-style-type: none"> <li>Screening</li> <li>Assessment (if found appropriate by screening)</li> <li>Educational series, unless treatment is ordered</li> </ul>  | <b>SHALL</b> order: <ul style="list-style-type: none"> <li>Screening</li> <li>Assessment (if found appropriate by screening)</li> <li>Educational series, unless treatment is ordered</li> </ul>  | <b>SHALL</b> order: <ul style="list-style-type: none"> <li>Screening</li> <li>Assessment (if found appropriate by screening)</li> <li>Educational series, unless treatment is ordered</li> </ul>   | <b>SHALL</b> order: <ul style="list-style-type: none"> <li>Screening</li> <li>Assessment (if found appropriate by screening)</li> <li>Educational series, unless treatment is ordered</li> </ul>   |

|   |  |  |   |  |
|---|--|--|---|--|
|   | <b>MAY</b> order:<br>• Treatment<br>• 24-7 sobriety program  | <b>MAY</b> order:<br>• Treatment<br>• 24-7 sobriety program  | <b>MAY</b> order:<br>• Treatment<br>• 24-7 sobriety program   | <b>MAY</b> order:<br>• Treatment<br>• 24-7 sobriety program  |
| <b>Supervised Probation<sup>7</sup></b><br>(§41-6a-507)               | <b>MAY</b> order supervised probation  | <b>SHALL</b> order supervised probation  | <b>SHALL</b> order supervised probation   | <b>SHALL</b> order supervised probation  |
| <b>Ignition Interlock<sup>8</sup></b><br>(§41-6a-518)<br>(§41-6a-530) | <b>SHALL</b> order unless:<br>• 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.<br><br><b>SHALL</b> order:<br>• Interlock if under <sup>21</sup> Interlock for an ARD <sup>9</sup> violation <b>OR</b> describe on the record why such order not appropriate | <b>SHALL</b> order unless:<br>• 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.<br><br><b>SHALL</b> order:<br>• Interlock if under <sup>21</sup> Interlock for an ARD <sup>9</sup> violation <b>OR</b> describe on the record why such order not appropriate | <b>SHALL</b> order unless:<br>• 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.<br><br><b>SHALL</b> order:<br>• Interlock if under <sup>21</sup> Interlock for an ARD <sup>9</sup> violation <b>OR</b> describe on the record why such order not appropriate. | <b>SHALL</b> order unless:<br>• 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.<br><br><b>SHALL</b> order:<br>• Interlock if under <sup>21</sup> Interlock for an ARD <sup>9</sup> violation <b>OR</b> describe on the record why such order not appropriate |
| <b>Increased Sentencing</b><br>(§41-6a-505)                           |  | <b>SHALL</b> order unless described on the record why the order(s) not appropriate:<br>• Treatment <b>and</b> One or more of the following:<br>• Interlock<br>• Ankle attached continuous transdermal alcohol monitoring device<br>• Electronic home confinement   |   | <b>SHALL</b> order unless described on the record why the order(s) not appropriate:<br>• Treatment <b>and</b> One or more of the following:<br>• Interlock<br>• Ankle attached continuous transdermal alcohol monitoring device<br>• Electronic home confinement   |
| <b>Driver License Suspension</b><br>(§41-6a-509)                      | Court <b>MAY</b> order <b>additional</b> 90 days, 120 days, 180 days, one year or two years  | Court <b>MAY</b> order <b>additional</b> 90 days, 120 days, 180 days, one year or two years  | Court <b>MAY</b> order <b>additional</b> 90 days, 120 days, 180 days, one year or two years   | Court <b>MAY</b> order <b>additional</b> 90 days, 120 days, 180 days, one year or two years  |
| <b>Impaired Driving</b><br>(§41-6a-502.5)                             | A conviction may <b>NOT</b> be entered as impaired driving if:<br>• BAC .16 or higher; • BAC .05 or higher + any measurable controlled substance; or<br>• Combination of two or more controlled substances   |  |   |  |

<sup>1</sup> The DUI Statutory Overview was formerly called the DUI Sentencing Matrix. However, unlike the Sentencing and Release Guidelines matrices this document does not use evidence-based practices, criminal history, and the current offense to suggest a criminal sentence. Instead, this document is intended to give an overview of penalties required by Driving Under the Influence Offenses, Utah Code Title 41, Chapter 6a, Part 5 and therefore has been renamed. It is a reference and overview for ease of use and greater transparency to assist in sentencing individuals convicted or sanctioned pursuant to Utah Code Title 41, Chapter 6a, Part 5. The DUI Statutory Overview is not a substitute for reference to the Utah State Code. It does not constitute legal advice and is not legally binding. It does not create any right or expectation on behalf of an offender or any party within the criminal justice system.

<sup>2</sup> A combination of two or more controlled substances may only be considered if the substances are not (A) prescribed by a licensed physician; or (B) recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act.

<sup>3</sup> A person is guilty of a separate offense for each victim suffering bodily injury, serious bodily injury or death, whether or not the injuries arise from the same episode of driving.

<sup>4</sup> A person is guilty of a separate offense for each passenger in the vehicle at the time of the offense that is under 16 years old.

<sup>5</sup> See §41-6a-506 for electronic home confinement provisions.

<sup>6</sup> If an individual fails to successfully complete all the requirements of the 24/7 sobriety program, the court shall impose the suspended jail sentence or prison sentence.

<sup>7</sup> Supervised probation is also required for all violations of §41-6a-517(14)(a) (driving with any measurable controlled substance or metabolite in the body).

<sup>8</sup> Adoption of the ignition interlock restricted driver (IRD) provision (§41-6a-518.2) does not change the obligation of judges to impose interlock as a condition of probation. Note: If a person's violation of Section 41-6a-502 does not involve alcohol, the requirement to order ignition interlock does not apply.

<sup>9</sup> ARD = Alcohol Restricted Driver.

# UTAH DUI STATUTORY OVERVIEW<sup>1</sup>

(Current as of May 4, 2021)

| Court-Ordered Sentencing  | FELONY DUI  |   |
|---|---|---|
| <b>CLASSIFICATION</b><br>(§41-6a-503)   | <b>THIRD DEGREE FELONY</b> <ul style="list-style-type: none"> <li>• if third or subsequent offense within 10 years</li> <li>• if serious bodily injury<sup>2</sup></li> <li>• if any prior felony DUI conviction or automobile homicide<sup>1</sup> conviction</li> </ul>                       | <b>THIRD DEGREE FELONY PLUS:</b> <ul style="list-style-type: none"> <li>• BAC .16 or higher</li> <li>• BAC .05 or higher + any measurable controlled substance</li> <li>• Combination of two or more substances<sup>3</sup></li> </ul>  |
| <b>Jail</b><br>(§41-6a-505)   | <b>SHALL</b> order:<br>0-5 year prison term <b>OR</b> <ul style="list-style-type: none"> <li>• 60 days jail <b>AND</b></li> <li>• 60 days consecutive electronic home confinement that includes substance abuse testing</li> </ul>  | <b>SHALL</b> order:<br>0-5 year prison term <b>OR</b> <ul style="list-style-type: none"> <li>• Not less than 120 days jail <b>AND</b></li> <li>• 120 days consecutive electronic home confinement that includes substance abuse testing</li> </ul>  |
| <b>Fine, Surcharge, and Court Security Fee</b><br>(§41-6a-505)<br>(§51-9-401)   | <b>SHALL</b> order:<br>\$1,500 minimum fine plus a<br>\$1,350 surcharge plus a<br>\$53 court security fee,<br><b>UNLESS</b> a 0-5 prison term is imposed  | <b>SHALL</b> order:<br>\$1,500 minimum fine plus a<br>\$1,350 surcharge plus a<br>\$53 court security<br><b>UNLESS</b> a 0-5 prison term is imposed   |
| <b>Screening, Assessment, Educational Series, and Treatment</b><br>(§41-6a-505) | <b>SHALL</b> order: <ul style="list-style-type: none"> <li>• Screening</li> <li>• Assessment</li> <li>• Treatment as appropriate</li> </ul> <b>UNLESS</b> 0-5 prison term is imposed<br><b>MAY</b> order: <ul style="list-style-type: none"> <li>• 24-7 sobriety program<sup>4</sup></li> </ul> | <b>SHALL</b> order: <ul style="list-style-type: none"> <li>• Screening</li> <li>• Assessment</li> <li>• Treatment as appropriate</li> </ul> <b>UNLESS</b> 0-5 prison term is imposed<br><b>MAY</b> order: <ul style="list-style-type: none"> <li>• 24-7 sobriety program<sup>4</sup></li> </ul> |
| <b>Supervised Probation<sup>5</sup></b><br>(§41-6a-507)                         | <b>SHALL</b> order supervised probation if 0-5 prison term is not imposed   | <b>SHALL</b> order supervised probation if 0-5 prison term is not imposed   |
| <b>Ignition Interlock<sup>6</sup></b><br>(§41-6a-518)<br>(§41-6a-530)           | <b>SHALL</b> order unless: <ul style="list-style-type: none"> <li>• 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.</li> </ul>  | <b>SHALL</b> order unless: <ul style="list-style-type: none"> <li>• 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.</li> </ul>  |
| <b>Driver License Suspension</b><br>(§41-6a-509)                                | • Court <b>MAY</b> order <b>additional</b> 90 days, 120 days, 180 days, one year or two years   | Court <b>MAY</b> order <b>additional</b> 90 days, 120 days, 180 days, one year or two years   |

<sup>1</sup> The DUI Statutory is intended to give an overview of penalties required by Driving Under the Influence Offenses, Utah Code Title 41, Chapter 6a, Part 5. It is a reference and overview for ease of use and greater transparency to assist in sentencing individuals convicted or sanctioned pursuant to Utah Code Title 41, Chapter 6a, Part 5. The DUI Statutory Overview is not a substitute for reference to the Utah State Code. It does not constitute legal advice and is not legally binding. It does not create any right or expectation on behalf of an offender or any party within the criminal justice system.

<sup>2</sup> A person is guilty of a separate offense for each victim suffering bodily injury, serious bodily injury or death, whether or not the injuries arise from the same episode of driving.

<sup>3</sup> A combination of two or more controlled substances may only be considered if the substances are not (A) prescribed by a licensed physician; or (B) recommended in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act.

The following statutory provisions also apply to DUI offenders, although they do not require a court order. Failure to comply carries additional criminal sanctions.<sup>1</sup>

| Statutory Provisions  | FIRST OFFENSE   | SECOND OR SUBSEQUENT OFFENSES WITHIN 10 YEARS   |
|---|---|---|
| <b>Driver License Denial, Suspension, or Revocation</b>   |   |   |
| <b>Driving Under the Influence/ DUI Conviction</b><br>(§41-6a-509)  | <b>If 21 or older:</b> 120 days<br><b>If 19-20:</b> Longer of one year or until 21st birthday<br><b>If under 19:</b> Until 21st birthday  | <b>If 21 or older:</b> 2 years<br><b>If 19-20:</b> Longer of 2 years or until 21st birthday<br><b>If under 19:</b> Until 21st birthday      |
| <b>Driving with Controlled Substance/ Metabolite in Body Conviction</b><br>(§41-6a-517)   | <b>If 21 or older:</b> 120 days<br><b>If 19-20:</b> Longer of one year or until 21st birthday<br><b>If under 19:</b> Until 21st birthday  | <b>If 21 or older:</b> 2 years<br><b>If 19-20:</b> Longer of two years or until 21st birthday<br><b>If under 19:</b> Until 21st birthday    |
| <b>Refusal of Chemical Test</b><br>(§41-6a-521)   | <b>If 21 or older:</b> 18 months<br><b>If under 21:</b> Longer of 2 years or until 21st birthday  | <b>If 21 or older:</b> 36 months<br><b>If under 21:</b> Longer of 36 months or until 21st birthday  |
| <b>Per se Arrest</b><br>(§53-3-223)<br>≥ .05 BAC, impaired to degree unsafe to drive, operating with metabolite of drug in system | <b>If 21 or older:</b> 120 days<br><b>If under 21:</b> 6 months   | <b>If 21 or older:</b> 2 years<br><b>If under 21:</b> Longer of 2 years or until 21st birthday  |
| <b>Not A Drop</b><br>(§53-3-231)<br>A person under 21 may not operate a vehicle or motorboat with detectable alcohol in body      | <b>If under 21:</b> Until successful completion of substance abuse program recommendation, but not less than 6 months   | <b>If under 21:</b> Until successful completion of substance abuse program recommendation, and the longer of 2 years or until 21st birthday |
| <b>Failure to Install or Removal of Ignition Interlock Device</b><br>(§53-3-1007)   | A person who is an interlock restricted driver (IRD) shall have their driving privilege suspended until they have had an interlock device installed in their vehicle. If the interlock device is removed prior to the ending date of the interlock restriction period, the driver license shall be re-suspended until an interlock device is re-installed. This suspension may be imposed in addition to other license sanctions as listed above.   |   |
| <b>Early License Reinstatement for Drivers Under 21</b>   |   |   |
| <b>Driving Under the Influence/DUI Conviction First Conviction</b><br>(§41-6a-509)  | Court may order shortening of the suspension period after <b>6 months</b> if the person completes a screening; completes an assessment if appropriate; completes an education series or substance abuse treatment, as deemed appropriate by the court; has not been convicted of a violation of a motor vehicle law during the suspension period; has complied with all terms of probation or all court orders if not ordered to probation; and provides a sworn statement to the court that the person has not unlawfully consumed alcohol during the suspension period. |   |
| <b>Driving with Controlled Substance/ Metabolite in Body Conviction First Conviction</b><br>(§41-6a-517)                          | Same as above but sworn statement must include the person has not consumed a controlled substance not prescribed by a practitioner during the suspension period.  |   |
| <b>Early License Reinstatement for Drivers 21 or Older</b>  |   |   |
| <b>Driving Under the Influence/DUI Conviction First Conviction</b><br>(§41-6a-509)  | Court may order individual to participate in a 24/7 sobriety program, which allows for early reinstatement of the driving privilege upon payment of driver license reinstatement fees and ignition interlock installation. Provision does not apply if the person refused to submit to a chemical test when arrested for DUI. Person is not able to reinstate their driving privilege unless all other outstanding license sanctions have been cleared.   |   |
| <b>Driving with Controlled Substance/ Metabolite in Body Conviction First Conviction</b><br>(§41-6a-517)                          | Court may order individual to participate in a 24/7 sobriety program, which allows for early reinstatement of the driving privilege upon payment of driver license reinstatement fees. Provision does not apply if the person refused to submit to a chemical test when arrested for DUI. Person is not able to reinstate their driving privilege unless all other outstanding license sanctions have been cleared.   |   |

## Other Sanctions

### IRD – Interlock Restricted Driver (§41-6a-518.2)

An “interlock restricted driver” may not operate a motor vehicle without an ignition interlock.

Note: If a person’s violation of Section 41-6a- 502 does not involve alcohol, or if all offenses are for metabolite convictions under Section 41- 6a-517 (no alcohol involved), IRD does not apply.

- **18 months IRD** for 1<sup>st</sup> DUI (§41-6a-502) if over 21 or refused blood draw (§41-6a-520(7))
- **3 years IRD** for 1<sup>st</sup> Driving Without Ignition Interlock Device if IRD (§41-6a-518.2), Refusal to Submit to Chemical Test (§41-6a-520), or 1<sup>st</sup> DUI (§41-6a-502) if under 21 or refused blood draw if under 21 (§41-6a-520(7))
- **3 years IRD** for a combination of two of the following within 10 years: DUI (§41-6a-502), Refusal to Submit to Chemical Test (§41-6a-521), Controlled Substance/Metabolite (§41-6a-517), Alcohol-Related Reckless (§41-6a-512 – *only violations prior to July 1, 2008*), Impaired Driving (§41-6a-502.5), Driving with Controlled Substance/Bodily Injury or Death (§58-37-8(2)(g)), or Automobile Homicide (§76-5-207)
- **6 years IRD** for Felony DUI (§41-6a-502) or 2<sup>nd</sup>+ offense for refused blood draw (§41-6a-520(7))
- **10 years IRD** for Automobile Homicide (§76-5-207)

### ARD – Alcohol Restricted Driver (§41-6a-529)

An “alcohol restricted driver” may not operate or be in actual physical control of a vehicle with any measurable or detectable amount of alcohol in the person’s body.

Note: If Per se is drug only or metabolite, ARD does not apply.

- **2 years ARD** for 1<sup>st</sup> DUI (§41-6a-502), Alcohol/Drug-Related Reckless (§41-6a-512), or Impaired Driving (§41-6a-502.5)
- **2 years ARD** for any Per se offense (§53-3-223)
- **3 years ARD** for any driving without an IID if an IRD (§41-6a-518.2) or driving with alcohol in body if an ARD (§41-6a-530) offense
- **5 years ARD** for 1<sup>st</sup> Refusal to Submit to Test (§41-6a-521) or Class A misdemeanor DUI (§41-6a-502)
- **10 years ARD** for 2<sup>nd</sup> offense within 10 years, DUI (§41-6a-502), Alcohol/Drug-Related Reckless (§41-6a-512), or Impaired Driving (§41-6a-502.5)
- **10 years ARD for 2<sup>nd</sup> offense of Refusal to Submit to Chemical Test (§41-6a-520(7))** if prior suspension for prior refusal within 10 years (41-6a-520(7))
- **10 years ARD for felony violation of refusal to submit to chemical test 41-6a-520(7))**
- **Lifetime ARD** for any Felony DUI (§41-6a-502) or Automobile Homicide (§76-5-207)

<sup>1</sup> The following provisions are intended to give an overview of penalties Driving Under the Influence Offenses, Utah Code Title 41, Chapter 6a, Part 5. It is a reference guide for ease of use and greater transparency to assist in understanding of sanctions pursuant to Utah Code Title 41, Chapter 6a, Part 5. The DUI matrix is not a substitute for reference to the Utah State Code. It does not constitute legal advice and is not legally binding. It does not create any right or expectation on behalf of an offender or any party within the criminal justice system.