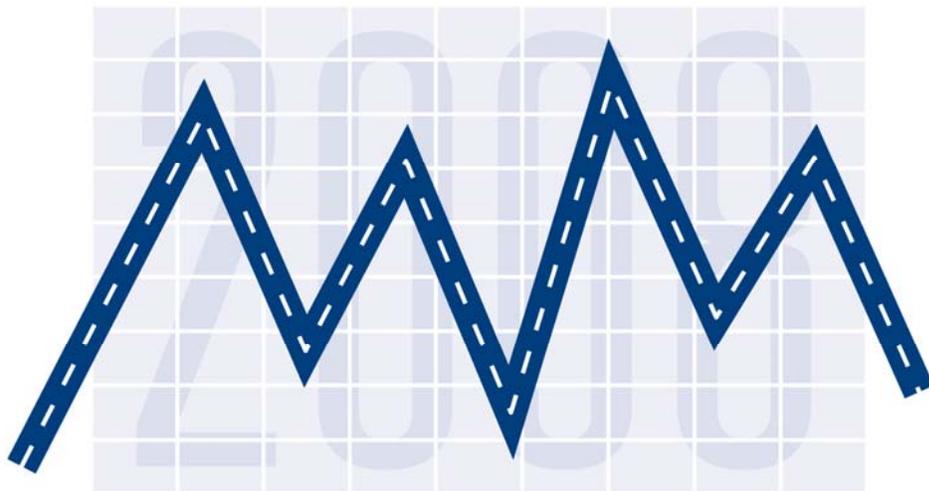


UTAH COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

## Sixth Annual DUI Report to the Utah Legislature

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## Acknowledgements

The Utah Commission on Criminal and Juvenile Justice acknowledges the contributions of the Utah Substance Abuse and Anti-Violence Coordinating Council, specifically the Council's DUI Subcommittee chaired by Anna Kay Waddoups.

Also contributing to this report are the Utah Administrative Office of the Courts and the Utah Department of Public Safety, including the Highway Patrol, Bureau of Criminal Identification, Driver License Division and Highway Safety Office.

Special thanks to Marty Asay, Paul Boyden, George Braden, Art Brown, Kim Gibb, Laurie Gustin, Jennifer Hemenway, Dr. Christine Mitchell, Gary Mower, Teri Pectol, Monica Taylor, Sgt. Ted Tingey, Senator Carlene Walker and David Walsh for their assistance in preparing this report.

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## Executive Summary

### DUI in Utah FY 2008

#### DUI-Related Fatalities Decreased in 2007

- DUI-related fatalities in Utah decreased from 68 in calendar year 2006 to 67 in calendar year 2007.
- Utah maintained the lowest rate of DUI-related fatalities in the nation in CY 2007, at 22 percent. The most recent national average was 41 percent (CY 2006).

#### Law Enforcement: Arrests

- There were 15,297 DUI arrests in FY 2008, 639 more than the previous year. The majority of the arrests, nearly 81 percent, were for violation of the .08 blood alcohol concentration (BAC) per se statute.
- Fifty-eight percent of all arrests for DUI were made by municipal law enforcement agencies.
- Seventy-eight percent of DUI drivers were male.
- Ten percent of arrestees were under the legal drinking age of 21. DUI drivers ages 25 through 36 accounted for 38 percent of all arrests.
- The majority of DUI arrests occurred along the Wasatch Front with Weber, Davis, Salt Lake and Utah Counties accounting for 66 percent of the total arrests.
- The average BAC was .14, with the highest at .41, over *five times* the legal limit!

## Courts: Adjudications and Sanctions

- Justice Courts handled the bulk of the DUI cases, with 11,229 (85%); District Courts handled 2,052 DUI cases (15%).
- Seventy-six percent of District Court DUI cases and 59 percent of Justice Court DUI cases resulted in a guilty plea or verdict.
- Justice Court judges ordered offenders to participate in an educational series in 1,058 cases, ordered offenders into substance abuse treatment in 819 cases, and ordered ignition interlock devices in 358 cases.
- District Court judges ordered offenders to participate in an educational series in 417 cases, ordered offenders into substance abuse treatment in 633 cases, and ordered ignition interlock devices in 353 cases.
- The average jail sentence for a DUI offense was 146 days and the average fine for a DUI conviction was \$1,488.50.

## Driver License Control

- The Driver License Division conducted 4,703 hearings to determine if there was sufficient information to warrant the suspension or revocation of the individual's driver license.
- In 1,969 cases, either the arresting officer or the DUI offender used the telephonic option to call in for the driver license hearing.

## Recommended Action

The Utah Substance Abuse and Anti-Violence (USAAV) Coordinating Council's DUI Subcommittee recommends the following action by the Utah Legislature:

- **Create Incentives for DUI Offenders to Complete Court-Ordered Sanctions, Including Substance Abuse Treatment**
  - Provide for the exclusion of a conviction for impaired driving from a person's motor vehicle record if: the reporting court notifies the Driver License Division

that the defendant is participating in or has successfully completed a DUI Court program, and the court administering the program is approved as a DUI Court by the Utah Judicial Council (*does not apply to commercial driver licensees or violations that occur in a commercial motor vehicle*).

- Provide that the Driver License Division shall reinstate a person's driver license prior to completion of the 90 day suspension period immediately upon receiving written verification of the person's conviction for impaired driving if: the written verification is received prior to the completion of the suspension period, the reporting court notifies the Driver License Division that the defendant is participating in or has successfully completed a DUI Court program, and the court administering the program is approved as a DUI Court by the Utah Judicial Council.
- Provide that if an impaired driving conviction is amended to a DUI conviction, the Driver License Division may not subtract from any suspension or revocation any time for which a license was previously suspended or revoked, and shall start the suspension or revocation time on the date of the amended conviction.

■ **Amend the Not a Drop Statute to Address Individuals Who Are Unable to Complete Recommended Action**

- Provide that the requirement that the reinstatement of a person's license for a person under 21 years of age operating a vehicle with a detectable amount of alcohol in the person's body is contingent upon the person's completion of an action recommended by a local substance abuse authority or a substance abuse program is only applicable within five years after the effective date of the license sanction.

■ **Eliminate the Requirement that Administrative Alcohol Hearings Must be Held in the County of Arrest**



## Introduction

**J**ohn Anthony Edwards and three of his friends were on their way home from a movie shortly after midnight on Sunday morning, July 1, 2007. Their car was stopped for a red light on 31<sup>st</sup> Street in Ogden when a three-quarter ton pickup truck going at least 63 miles per hour slammed into them, “leaving the car crumpled like a ball of aluminum foil”. Edwards, 17, who was sitting in the back seat of the car, was killed. Colt Hampton, also 17 and in the back seat, was taken to the hospital in critical condition, and to this day still suffers from physical problems and must undergo reconstructive surgeries. Fortunately, the two 16-year-old girls in the front seat, Keltsey Miller and Mikell Bennion, were not badly injured.

According to the Ogden Standard-Examiner, the driver of the pickup truck, 35-year-old Daniel Rodriguez, was “no stranger to alcohol-related arrests”. And yet, with a history of DUI, alcohol-related reckless driving and public intoxication, Rodriguez chose to get behind the wheel of his car with a blood alcohol content of .17, more than twice Utah’s legal limit. After hitting the teens’ car he fled the scene, but a witness led police to a home where they found him passed out. Rodriguez had an alcohol restriction on his license, which meant he was prohibited from driving after consuming any amount of alcohol. He was eventually sentenced to prison for up to 15 years after pleading guilty to second-degree felony automobile homicide. In exchange for his pleading guilty, charges for leaving the scene and driving on a restricted license were dismissed.

This incident provided Utah’s first DUI-related statistics for FY 2008, less than one hour into the new year.<sup>1</sup> But the numbers don’t begin to describe the very human side of DUI tragedy. John Edwards’ mother summed it up as follows: “It hurts so bad to know I will never have the opportunity to hug him, touch him, hear his voice, see his face or be able to stand next to my big six-foot-four baby boy again. No other family should have to experience the pain and heartache we are now living with, each and every day without John.”

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<sup>1</sup> Information for the DUI incident involving John Anthony Edwards was obtained from newspaper articles by **Salt Lake Tribune** reporters Steve Gehrke and Stephen Hunt, and **Standard-Examiner** reporter Victoria Johnson.

## Purpose of the Report

The *Sixth Annual Driving Under the Influence Report to the Utah Legislature* was prepared in accordance with §41-6a-511 of the Utah Code. The statute requires the Utah Commission on Criminal and Juvenile Justice to prepare an annual report of DUI related data, including the following:

- Data collected by the state courts to allow sentencing and enhancement decisions to be made in accordance with violations involving driving under the influence of alcohol and/or other drugs;
- Data collected by the justice courts (same DUI related data elements collected by the state courts); and
- Any measures for which data are available to evaluate the profile and impacts of DUI recidivism and to evaluate the DUI related processes of:
  - law enforcement;
  - adjudication;
  - sanctions;
  - drivers' license control; and
  - alcohol education, assessment, and treatment.

## 2008 DUI and Related Legislation



The following bills and appropriations were passed by the Utah Legislature in the 2008 General Session:

### S.B. 15      Driving Under the Influence Amendments *Senator Carlene Walker*

Amends the definition of "drug" or "drugs" to mean: a controlled substance as defined in Section 58-37-2 (Controlled Substances Act); a drug as defined in Section 58-17b-102 (Pharmacy Practice Act); or any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.

Enacts an impaired driving plea; provides that a plea to a driving under the influence violation for an offense committed after July 1, 2008 may be entered as an impaired driving conviction in certain circumstances; and provides that an impaired driving violation is a class B misdemeanor.

Provides requirements for a court entering a conviction of impaired driving in certain circumstances; requires the court to notify the Driver License Division of an impaired driving conviction; and provides sentencing requirements for impaired driving convictions.

Provides that certain plea requirements, when the prosecution agrees to a plea of guilty or no contest to an alcohol or drug-related reckless charge in satisfaction or substitute of an original charge of driving under the influence, only apply to an offense committed before July 1, 2008.

Clarifies that certain license reinstatement provisions only apply to a certain 90-day suspension period imposed by the Driver License Division.

Increases the administrative impound fee from \$230 to \$330 for a driving under the influence violation impound and appropriates as an ongoing appropriation subject to future budget constraints: \$660,000 from the General Fund for fiscal year 2008-09 to the Department of Public Safety, Utah Highway Patrol; and \$660,000 from the General Fund for fiscal year 2008-09 to the Department of Public Safety, Liquor Law Enforcement Program.

## H.B. 178 Jurisdiction for Prosecution

*Representative Paul Neuenschwander*

Clarifies the territorial jurisdiction of justice courts, including situations such as: when the offense is committed in or on a vehicle, railroad car, or watercraft passing through the jurisdiction of the court; when the offense is committed on a body of water adjacent to the jurisdiction of the court; when an unlawful communication is sent or received within the jurisdiction; or when an element of an offense is committed within the jurisdiction.

## H.B. 371 Digital Certificates for Breathalyzers

*Representative Christopher Herrod*

Allows the Department of Public Safety to digitize certificates of calibration for breathalyzers.

Requires that the Department of Public Safety provide a secure location on its website to post the digital certificates.

## Appropriations

### **CEASE DUI: Computer Expedited Arrest System to Eliminate DUI**

The 2008 Legislature appropriated \$750,000 in one-time funding (to be utilized over three years) to the Utah Commission on Criminal and Juvenile Justice to implement CEASE DUI. CEASE DUI is an innovative redesign of Utah's citation system to ensure that data flows seamlessly between law enforcement agencies, the courts, and the state's criminal justice databases.

Using the CEASE DUI system a local law enforcement officer will enter the data directly into the Utah Criminal Justice Information System (UCJIS) system, thus eliminating much of the paperwork necessary to issue a citation. Once entered into the system, the data will flow directly to both prosecution and courts, improving both the timeliness and accuracy of Utah's criminal justice information systems and decreasing the time to complete paperwork. In addition, this system will facilitate the production and filing of search warrants, further streamlining the citation workflow.

CEASE DUI will use the same techniques and technologies as the citation system to re-design jail booking workflow, again improving the timeliness and accuracy of Utah's criminal justice information systems and ensuring that officers spend less time completing the necessary paperwork and are back to their enforcement duties more quickly. System advantages include:

- Improves accuracy of data available to prosecutors and courts;
- Enhances the accuracy and timeliness of data available in the state criminal justice databases; and
- Improves disposition reporting for DUIs, domestic violence and other serious offenses.

The CEASE DUI funding will be granted over a three-year period to enforcement agencies to purchase the technology to link state and local criminal justice information systems together. In addition, a portion of the funding will be used to evaluate Utah's DUI initiatives to measure program effectiveness.

#### **Alcoholic Beverage Enforcement and Treatment Restricted Account (§32A-1-115)**

The 2008 Legislature appropriated \$5,425,600 to the Alcoholic Beverage Enforcement and Treatment Restricted Account for FY 2008-09. Funding from this account is distributed on a formula basis to Utah's municipalities and counties to be used for the following purposes: (1) DUI law enforcement, (2) general alcohol-related law enforcement, (3) prosecution/court costs for alcohol-related cases, (4) treatment of alcohol problems, (5) alcohol-related education/prevention, and (6) confinement of alcohol law offenders.



## 2008 USAAV DUI Subcommittee



The Utah Substance Abuse and Anti-Violence (USAAV) Coordinating Council DUI Subcommittee members represent agencies and organizations dealing with the DUI issue in Utah. With the support and action of Utah's Legislature and other key leaders and policymakers, the subcommittee continues to work to strengthen Utah's ability to effectively address the DUI problem.

<b>Anna Kay Waddoups</b> Citizen Member and Chair	
David Beach	Director, Highway Safety Office <i>Utah Department of Public Safety</i>
Brent Berkley	Traffic Safety Resource Prosecutor <i>Utah Prosecution Council</i>
Bart Blackstock	Citizen Member and Former Deputy Director Driver License Division, <i>Department of Public Safety</i>
Paul Boyden	Executive Director <i>Statewide Association of Prosecutors</i>
Neil Cohen	Compliance Officer <i>Utah Department of Alcoholic Beverage Control</i>
Colonel Lance Davenport	Superintendent, Utah Highway Patrol <i>Utah Department of Public Safety</i>
Patty Fox	Post-Trial Services Program Manager <i>Salt Lake County Criminal Justice Services</i>
Kim Gibb	Bureau Chief, Driver License Division <i>Utah Department of Public Safety</i>
Chief Wayne Hansen	Farmington Police Department <i>Utah Chiefs of Police Association</i>
Gail Johnson	Education Specialist <i>Utah State Office of Education</i>
Teri Pectol	Program Manager, Highway Safety Office <i>Utah Department of Public Safety</i>
Richard Schwermer	Assistant State Court Administrator <i>Administrative Office of the Courts</i>
Sheriff Kirk Smith	Washington County Sheriff's Office <i>Utah Sheriffs Association</i>
Senator Carlene Walker	Senator <i>Utah State Senate</i>
Holly Watson	Substance Abuse Education Program Manager <i>Utah Division of Substance Abuse and Mental Health</i>
Mary Lou Emerson <i>Director, USAAV Council</i>	Monica Taylor <i>Administrative Assistant, USAAV/CCJJ</i>



## Law Enforcement

The Utah Department of Public Safety, through its Driver License Division and Highway Safety Office, collects information on all DUI arrests. In FY 2008, Utah law enforcement officers made 15,297 DUI arrests, 639 more than in the previous year.

### DUI Arrests

#### DUI Arrests by Type

As illustrated in the following table, the distribution of DUI arrests by type of violation in FY 2008 was very similar to previous years. The majority of the arrests, nearly 81 percent, were for violations of the per se law, for driving at or above the legal blood alcohol concentration level of .08. Almost 12 percent of arrests were for refusal to submit to a chemical test. Under Utah law, any person who operates a motor vehicle is considered to have given consent to tests of breath, blood, urine, or oral fluids for the purpose of determining whether they are driving in violation of the DUI laws. Refusal may result in revocation of the driver license and prohibition of driving without an ignition interlock device. It is also illegal to drive with any measurable controlled substance or metabolite in one's body, which accounted for one percent of arrests. Violations of the Not a Drop statute, by persons under the age of 21 who drove with any measurable alcohol concentration in their body, accounted for nearly six percent of the arrests. The fewest arrests were of commercial drivers exceeding the .04 limit, which represented only 0.2 percent of the total.

DUI Arrests by Type	FY 2006		FY 2007		FY 2008	
	Number	Percent	Number	Percent	Number	Percent
Per se Alcohol (.08)	10,747	76.0%	11,732	80.0%	12,368	80.8%
Refusal of BAC Test	1,800	12.7%	1,737	11.9%	1,802	11.8%
Not a Drop (< 21)	837	5.9%	910	6.2%	902	5.9%
Drug or Metabolite	718	5.1%	251	1.7%	195	1.3%
Commercial Driver (.04)	36	0.3%	28	0.2%	30	0.2%
<b>TOTAL</b>	<b>14,138</b>	<b>100.0%</b>	<b>14,658</b>	<b>100.0%</b>	<b>15,297</b>	<b>100.0%</b>

Source: Utah Department of Public Safety, Driver License Division

### DUI Overtime Enforcement Events

The arrests made in FY 2008 included those that occurred as a result of specialized DUI overtime enforcement events specifically targeted at removing drivers under the influence of alcohol and/or other drugs from Utah's roads. A portion of the DUI impound fees collected was specifically designated to fund the overtime shifts. During FY 2008, 78 law enforcement agencies throughout the state participated in overtime events, including local police agencies, Sheriffs' offices, and the Utah Highway Patrol.

The table below shows all measures associated with DUI overtime enforcement events decreased from FY 2007 to FY 2008. Of the total 1,286 DUI arrests in FY 2008, 1,066 were for DUI-alcohol, 141 were for DUI-drug, and 79 were for metabolite. Among the individuals arrested, 803 submitted to a breath test, 134 submitted to a blood test, 57 submitted to a urine test, and 135 refused all chemical tests.

<b>Statewide DUI Overtime Enforcement Events</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>Percent Change FY 07 – FY 08</b>
5-Hour Shifts Worked	2,347	1,956	-16.7%
Vehicles Stopped	18,642	14,867	-20.2%
DUI Arrests	1,536	1,286	-16.3%
Vehicles Impounded	1,436	1,206	-16.0%
Alcohol-Related Arrests*	862	747	-13.3%
Drug-Related Arrests**	631	460	-27.1%
Warrants Served	528	429	-18.7%
Other Warnings/Citations	19,276	15,942	-17.3%

Source: Utah Department of Public Safety, Highway Safety Office  
 \*Includes open container and youth alcohol violations (possession, consumption, attempted purchase, Not a Drop)  
 \*\*For example, drug possession

### DUI Arrests by Agency Type

More than half of all arrests in FY 2008, nearly 58 percent, were made by municipal law enforcement agencies, with the Utah Highway Patrol responsible for almost 25 percent of arrests, and Sheriffs' Offices responsible for 18 percent of DUI arrests.

<b>DUI Arrests by Agency Type</b>	<b>FY 2006</b>		<b>FY 2007</b>		<b>FY 2008</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
Sheriffs' Offices	2,329	16.5%	2,386	16.3%	2,728	17.8%
City Police/Other	8,441	59.7%	8,979	61.2%	8,805	57.6%
Highway Patrol	3,368	23.8%	3,293	22.5%	3,764	24.6%
<b>TOTAL</b>	<b>14,138</b>	<b>100.0%</b>	<b>14,658</b>	<b>100.0%</b>	<b>15,297</b>	<b>100.0%</b>

Source: Utah Department of Public Safety, Driver License Division

### DUI Arrests by Gender

The table on the following page shows the proportions of male and female arrestees have remained very consistent over the past three years. In FY 2008, 78 percent were male and 21 percent were female.

DUI Arrests by Gender	FY 2006		FY 2007		FY 2008	
	Number	Percent	Number	Percent	Number	Percent
Male	11,160	78.9%	11,611	79.2%	11,965	78.2%
Female	2,955	20.9%	3,024	20.6%	3,272	21.4%
Unspecified	23	0.2%	23	0.2%	60	0.4%
<b>TOTAL</b>	<b>14,138</b>	<b>100.00%</b>	<b>14,658</b>	<b>100.0%</b>	<b>15,297</b>	<b>100.0%</b>

Source: Utah Department of Public Safety, Driver License Division

### DUI Arrests by Age

The youngest DUI driver in FY 2008 was 14 years old. Ten percent of arrestees were under the legal drinking age of 21. Drivers between the ages of 25 and 36 accounted for 38 percent of all arrests.

DUI Arrests by Age	FY 2006		FY 2007		FY 2008	
	Number	Percent	Number	Percent	Number	Percent
Unknown	0	0.0%	0	0.0%	2	0.0%
13-20	1,606	11.4%	1,643	11.2%	1,612	10.5%
21-24	2,633	18.6%	2,726	18.7%	2,887	18.9%
25-36	5,110	36.1%	5,488	37.4%	5,882	38.4%
37-48	3,143	22.2%	3,081	21.0%	3,132	20.5%
49+	1,646	11.7%	1,720	11.7%	1,782	11.7%
<b>TOTAL</b>	<b>14,138</b>	<b>100.0%</b>	<b>14,658</b>	<b>100.0%</b>	<b>15,297</b>	<b>100.0%</b>

Source: Utah Department of Public Safety, Driver License Division

### DUI Arrests by Month

As in previous years, DUI arrests remained fairly consistent throughout FY 2008, with an average arrest rate of 1,275 per month. The highest number of arrests occurred in March (1,370), with the lowest number of arrests in January (1,139).

DUI Arrests by Month	FY 2006		FY 2007		FY 2008	
	Number	Percent	Number	Percent	Number	Percent
July	1,291	9.1%	1,214	8.3%	1,302	8.5%
August	1,202	8.5%	1,228	8.4%	1,312	8.6%
September	1,174	8.3%	1,314	9.0%	1,353	8.8%
October	1,233	8.7%	1,250	8.5%	1,242	8.1%
November	1,123	7.9%	1,178	8.0%	1,270	8.3%
December	1,211	8.6%	1,257	8.6%	1,307	8.5%
January	1,184	8.4%	1,175	8.0%	1,139	7.4%
February	1,016	7.3%	1,100	7.5%	1,176	7.8%
March	1,264	8.9%	1,246	8.5%	1,370	9.0%
April	1,159	8.2%	1,202	8.2%	1,245	8.1%
May	1,161	8.2%	1,277	8.7%	1,314	8.6%
June	1,120	7.9%	1,217	8.3%	1,267	8.3%
<b>TOTAL</b>	<b>14,138</b>	<b>100.0%</b>	<b>14,658</b>	<b>100.0%</b>	<b>15,297</b>	<b>100.0%</b>

Source: Utah Department of Public Safety, Driver License Division

## DUI Arrests by County

Consistent with past years, the majority of DUI arrests during FY 2008 occurred along the Wasatch Front with Weber, Davis, Salt Lake and Utah Counties accounting for 66 percent (10,088) of the total. Salt Lake County had the highest number of arrests with 5,073 (33%), while Piute County had the fewest arrests with three (0.0%). The table below also compares the percentage of DUI arrests to the percentage of both total population and vehicle miles traveled in each county.

County	DUI Arrests FY 2008		Population Estimate July 1, 2007		Vehicle Miles Traveled Calendar Year 2007	
	Number	Percent	Number	Percent	Number	Percent
Beaver	60	0.4%	6,466	0.2%	256,056,502	0.9%
Box Elder	211	1.4%	47,491	1.8%	915,253,384	3.4%
Cache	514	3.4%	109,022	4.0%	980,858,779	3.7%
Carbon	239	1.6%	19,730	0.7%	290,210,793	1.1%
Daggett	7	0.0%	969	0.0%	32,946,533	0.1%
Davis	1,753	11.5%	296,029	11.0%	2,520,879,593	9.4%
Duchesne	155	1.0%	16,163	0.6%	235,057,772	0.9%
Emery	82	0.5%	10,461	0.4%	359,607,553	1.3%
Garfield	28	0.2%	4,872	0.2%	119,839,052	0.5%
Grand	164	1.1%	9,125	0.3%	287,000,666	1.1%
Iron	405	2.7%	44,813	1.7%	705,076,284	2.6%
Juab	223	1.5%	9,654	0.4%	416,231,534	1.5%
Kane	110	0.7%	6,440	0.2%	151,567,592	0.6%
Millard	127	0.8%	13,414	0.5%	459,793,726	1.7%
Morgan	35	0.2%	9,265	0.3%	142,725,364	0.5%
Piute	3	0.0%	1,385	0.1%	31,273,031	0.1%
Rich	5	0.0%	2,162	0.1%	49,909,317	0.2%
Salt Lake	5,073	33.2%	1,018,904	37.7%	8,795,336,836	32.8%
San Juan	139	0.9%	14,807	0.5%	279,380,331	1.0%
Sanpete	134	0.9%	26,464	1.0%	234,613,884	0.9%
Sevier	162	1.1%	20,442	0.8%	420,130,782	1.6%
Summit	346	2.3%	38,412	1.4%	777,266,807	2.9%
Tooele	508	3.3%	56,536	2.1%	912,517,523	3.4%
Uintah	478	3.1%	28,806	1.1%	351,701,949	1.3%
Utah	1,847	12.1%	501,447	18.6%	3,736,343,198	13.9%
Wasatch	176	1.1%	21,951	0.8%	305,710,283	1.1%
Washington	891	5.8%	140,908	5.2%	1,382,098,903	5.2%
Wayne	7	0.0%	2,635	0.1%	40,181,829	0.2%
Weber	1,415	9.2%	220,781	8.2%	1,634,674,536	6.1%
<b>TOTAL</b>	<b>15,297</b>	<b>100.0%</b>	<b>2,699,554</b>	<b>100.0%</b>	<b>26,824,244,333</b>	<b>100.0%</b>
Source for DUI Arrest Data: Utah Department of Public Safety, Driver License Division Source for Population Data: Governor's Office of Planning and Budget, Demographic and Economic Analysis Section Source for Vehicle Miles Traveled: Utah Department of Transportation						

## DUI Arrests by Blood Alcohol Concentration (BAC)

The average BAC remained at .14 during FY 2008, with the highest BAC recorded at .41, over five times the legal limit!

DUI Arrests by Blood Alcohol Content	FY 2006		FY 2007		FY 2008	
	Number	Percent	Number	Percent	Number	Percent
BAC Results Not Reported	3,375	23.9%	3,428	23.4%	3,536	23.1%
.01 - .07	897	6.3%	924	6.3%	982	6.4%
.08 - .10	1,497	10.6%	1,569	10.7%	1,617	10.6%
.11 - .15	2,676	18.9%	2,854	19.5%	3,072	20.1%
.16 - .20	1,950	13.8%	2,127	14.5%	2,129	13.9%
.21 - .25	819	5.8%	873	6.0%	935	6.1%
.26+	362	2.6%	382	2.6%	357	2.3%
Refused BAC Test	1,775	12.6%	1,808	12.3%	1,815	11.9%
No Test/Unknown	540	3.8%	470	3.2%	607	4.0%
Drug Only	247	1.7%	223	1.5%	247	1.6%
<b>TOTAL</b>	<b>14,138</b>	<b>100.0%</b>	<b>14,658</b>	<b>100.0%</b>	<b>15,297</b>	<b>100.0%</b>

Source: Utah Department of Public Safety, Driver License Division

## Repeat DUI Offenders by Type of Arrest

The following table shows repeat offender data by type of DUI-related arrest. Data were calculated by selecting offenders arrested in FY 2008 as a starting point, then counting back 10 years to determine previous arrests. Each offender was placed in an arrest type column determined by the type of the most recent arrest. Finally, the total number of arrests reflected in this table is fewer than the total arrests for FY 2008 because each offender was counted only once, although the offender may have been arrested more than one time during the fiscal year. The data show approximately 67 percent of arrests were for a first offense, 21 percent were for a second offense, 8 percent were for a third offense, and four percent were for a fourth or subsequent offense.

Arrest Type Offense	Per se Alcohol (.08)	Refusal of BAC Test	Not a Drop (< 21)	Drug or Metabolite	Commercial Driver (.04)	TOTAL	
						Number	Percent
First	7,913	930	463	151	13	9,470	66.8%
Second	2,173	406	364	25	11	2,979	21.0%
Third	879	190	35	6	1	1,111	7.8%
Fourth	267	108	11	3	1	390	2.8%
Fifth	102	40	2	0	0	144	1.0%
Sixth	30	19	0	1	0	50	0.3%
Seventh	20	5	0	0	0	25	0.2%
Eighth	8	1	1	0	0	10	0.1%
Ninth	2	1	0	0	0	3	0.0%
Tenth +	2	4	0	0	0	6	0.0%
<b>TOTAL</b>	<b>11,396</b>	<b>1,704</b>	<b>876</b>	<b>186</b>	<b>26</b>	<b>14,188</b>	<b>100.0%</b>

Source: Utah Department of Public Safety, Driver License Division

### DUI-Related Crashes, Injuries and Fatalities

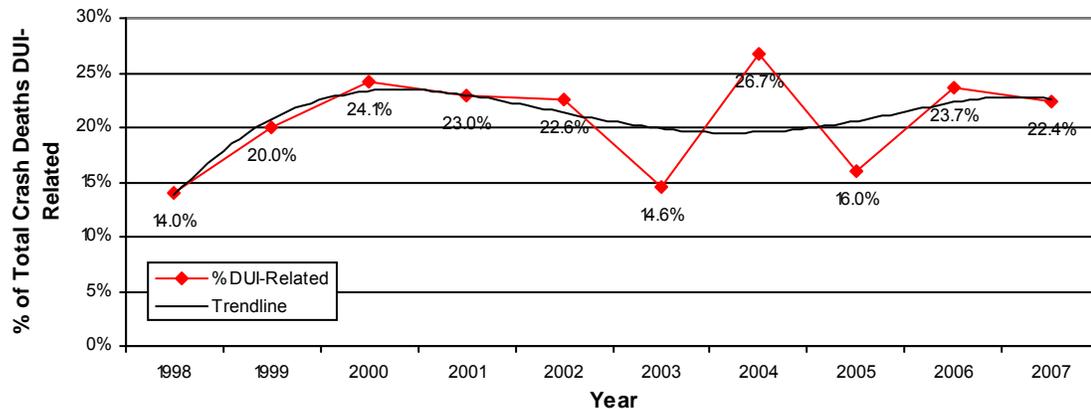
According to the Utah Department of Public Safety Highway Safety Office, a DUI-related crash occurs in Utah every three hours. The following table shows the total number of DUI-related vehicle crashes for each calendar year from 1998 to 2007, including the number of persons injured and the number of persons killed as a result of the crashes. The number of DUI-related fatalities in Utah decreased from calendar year 2006 to 2007, and Utah maintained the lowest rate of DUI-related fatalities in the nation in calendar year 2007, at 22 percent. The most recent national average was 41 percent (National Highway Traffic Safety Administration, Calendar Year 2006).

Calendar Year	DUI-Related Crashes, Injuries and Fatalities in Utah, 1998-2007						
	Total DUI-Related Crashes	Injuries			Fatalities		
		Total Injured Persons	DUI-Related Injured Persons	Percent DUI-Related	Total Crash Fatalities	DUI-Related Fatalities	Percent DUI-Related
1998	1,909	30,232	1,771	5.9%	350	49	14.0%
1999	2,045	29,959	1,849	6.2%	360	72	20.0%
2000	2,163	30,086	1,846	6.1%	373	90	24.1%
2001	2,150	29,375	1,764	6.0%	291	67	23.0%
2002	2,104	30,433	1,685	5.5%	328	74	22.6%
2003	1,947	28,352	1,360	4.8%	309	45	14.6%
2004	1,966	29,638	1,570	5.3%	296	79	26.7%
2005	2,056	29,221	1,398	4.8%	282	45	16.0%
2006	2,674	27,257	1,966	7.2%	287	68	23.7%
2007	Not Available	Not Available			299	67	22.4%

Information Compiled by: Utah Department of Public Safety, Highway Safety Office  
 Data Source: 1998-2006 Utah Crash Data and 1998-2007 Fatality Analysis Reporting System (FARS) Data

The figure below illustrates the DUI-related crash fatality data in the table above for Utah, from 1998 to 2007.

**Percentage of Total Crash Fatalities That Were DUI-Related in Utah, 1998-2007**



Source: Utah Department of Public Safety, Highway Safety Office

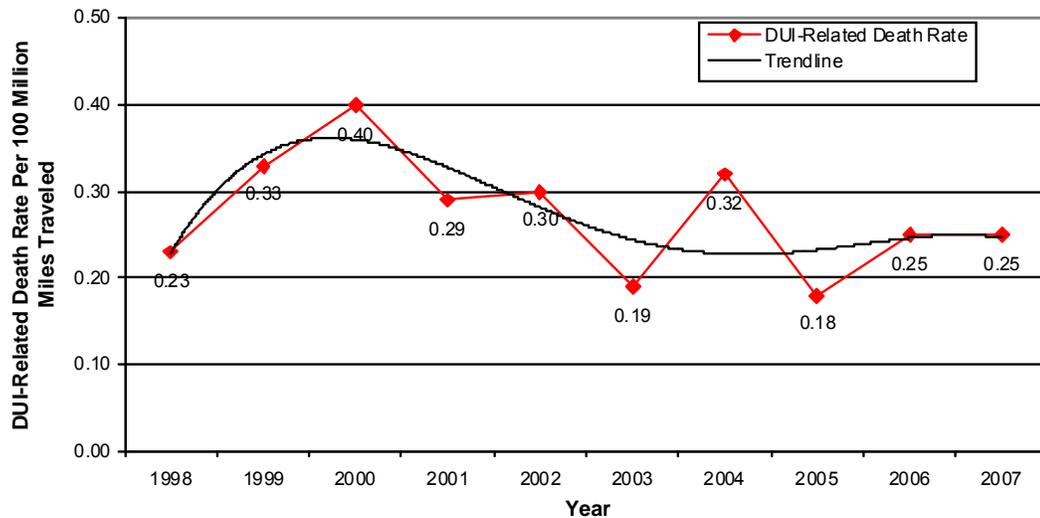
Rates of DUI-Related Fatalities by Population and Vehicle Miles Traveled  
 The following table shows the rates of DUI-related fatalities per 10,000 population and per 100 million vehicle miles traveled in Utah, from 1998 to 2007.

Calendar Year	Rates of DUI-Related Fatalities per 10,000 Population and 100 Million Vehicle Miles Traveled in Utah, 1998-2007				
	DUI-Related Fatalities	DUI-Related Fatality Rates per 10,000 Population		DUI-Related Fatality Rates per 100 Million Vehicle Miles Traveled	
		Population	Rate	Vehicle Miles Traveled	Rate
1998	49	2,141,632	0.23	21,236,980,216	0.23
1999	72	2,193,014	0.33	21,867,355,694	0.33
2000	90	2,246,553	0.40	22,517,131,427	0.40
2001	67	2,295,971	0.29	23,398,734,621	0.29
2002	74	2,338,761	0.32	24,438,992,554	0.30
2003	45	2,385,358	0.19	23,963,242,376	0.19
2004	79	2,469,230	0.32	24,624,791,795	0.32
2005	45	2,547,389	0.18	25,129,538,952	0.18
2006	68	2,615,129	0.26	26,166,885,473	0.25
2007	67	2,699,554	0.25	26,824,244,333	0.25

Information Compiled by: Utah Department of Public Safety, Highway Safety Office  
 Data Source: Fatality Analysis Reporting System (FARS) Data, 1998-2007

The figure below illustrates the rate of DUI-related fatalities in Utah from 1998 to 2007, per 100 million vehicle miles traveled.

**Rate Per 100 Million Vehicle Miles Traveled of DUI-Related Fatalities in Utah, 1998-2007**



Source: Utah Department of Public Safety, Highway Safety Office

### Day and Hour of DUI-Related Crashes

The Highway Safety Office reports in calendar year 2006, the highest percentage of DUI-related crashes, including property damage only crashes, injury crashes and fatal crashes, occurred on Saturday. DUI-related injury crashes peaked in the evening and early morning hours, between 5:00 p.m. and 2:00 a.m. Fatal DUI-related crashes varied by hour, and peaked at 1:00 a.m.

### Use of State Beer Tax Funds for DUI Law Enforcement

The state's beer tax funds are used to support DUI enforcement, as well as other alcohol-related enforcement, education/prevention and treatment activities. For FY 2008, the Legislature appropriated \$4,984,800 to be distributed from the *Alcoholic Beverage Enforcement and Treatment Restricted Account* (§32A-1-115) to municipalities and counties statewide on a formula basis.<sup>2</sup> Funds can be spent in one or more of six general categories: (1) DUI law enforcement, (2) general alcohol-related law enforcement, (3) prosecution/court costs for alcohol-related cases, (4) treatment of alcohol problems, (5) alcohol-related education/prevention, and (6) confinement of alcohol law offenders. Communities receiving more than \$1,000 in beer tax revenues are required to submit an Annual Report to the Utah Substance Abuse and Anti-Violence Coordinating Council by October 1<sup>st</sup> of each year, outlining how funds were utilized, whether the programs or projects funded were effective, and certifying the funds were used in accordance with the law. Municipalities and counties that do not submit their reports by the deadline forfeit their alcohol funds for the current fiscal year and these funds are then allocated to other entities, in accordance with the statute.

The following table shows how FY 2008 funds were utilized, as reported in the Alcohol Funds Annual Reports received to date.

<b>FY 2008 Alcohol Funds Reports How Funds Were Used - As of 10/22/08</b>	<b>Number of Communities (N =164)</b>	<b>Percent<sup>3</sup></b>
DUI Law Enforcement	91	55.5%
General Alcohol-Related Law Enforcement	99	60.4%
Prosecution/Court Costs for Alcohol-Related Cases	46	28.0%
Treatment of Alcohol Problems	8	4.9%
Alcohol-Related Education/Prevention	64	39.0%
Confinement of Alcohol Law Offenders	15	9.1%

Source: Utah Substance Abuse and Anti-Violence Coordinating Council, FY 2008 Alcohol Funds Annual Reports

<sup>2</sup> In accordance with §32A-1-115 (UCA), the State Tax Commission distributes funds to municipalities and counties in December of each year based upon the following formula: percentage of state population (25%); percentage of statewide convictions for all alcohol-related offenses (30%); percentage of all state stores, package agencies, liquor licensees, and beer licensees (20%); and for confinement and treatment purposes (for alcohol-related offenses) based upon the percentage of the state population (25% to counties only).

<sup>3</sup> Communities may use alcohol funds for more than one of the six categories outlined in the statute.

Adjudications  
& Sanctions

## 3

## Adjudications and Sanctions

DUI offenses are classified either as misdemeanors or felonies, depending on the type of offense and whether it is a repeat offense. Misdemeanor cases are handled in Justice Courts, which are sponsored by municipalities and counties. Felony cases and cases not referred to the Justice Courts are handled in state District Courts. Of the 13,281 DUI cases that went to court during FY 2008, District Courts handled 2,052 (15 percent) and Justice Courts handled 11,229 (85 percent). The number of DUI cases disposed in the state's District Courts and the number of DUI cases charged in the Justice Courts both increased by about one percent from FY 2007 to FY 2008.

DUI Cases in Utah's Courts	FY 2006	FY 2007	FY 2008	% Change FY 07 – FY 08
District Court Cases Disposed	2,386	2,025	2,052	+1.3%
Justice Court Charges	9,896	11,074	11,229	+1.4%
Total DUI Cases	12,282	13,099	13,281	+1.4%

Source: Utah Administrative Office of the Courts

### Justice Court DUI Data

#### Justice Court DUI Charges and Outcomes

During FY 2008, Utah's Justice Courts handled 11,229 DUI cases, 155 more than in FY 2007. The following table details the DUI cases filed in Justice Courts and their outcomes. This table does not accurately represent the DUI conviction rate for the Justice Courts, as it includes cases filed in FY 2007 that were not resolved until FY 2008. In addition, 1,961 cases were still pending resolution at the close of FY 2008.

Justice Court DUI Charges and Outcomes	FY 2007		FY 2008		% Change FY 07 – FY 08
	Number	Percent	Number	Percent	
Total DUI Charges Filed	11,074	100.0%	11,229	100.0%	+1.4%
Guilty	6,875	62.1%	6,681	59.5%	-2.8%
Dismissed or Not Guilty	2,649	23.9%	2,587	23.0%	-2.3%
Cases Pending	1,550	14.0%	1,961	17.5%	+26.5%

Source: Utah Administrative Office of the Courts

### Justice Court DUI Sanctions

The Justice Courts also track other DUI-related case information such as blood alcohol content (BAC) reported; screening, assessment and treatment ordered; and ignition interlock ordered. The table below includes data for the 88 Justice Courts reporting to the Department of Public Safety's Bureau of Criminal Identification. The numbers reflect only those dispositions loaded into the Criminal History Repository, and do not include those in the suspense file. The data indicate in 1,672 cases the blood alcohol content was known. The table further shows judges ordered offenders to participate in an educational series in 1,058 cases, substance abuse treatment in 819 cases, and that ignition interlock devices were ordered in 358 cases.

<b>Justice Court DUI Sanctions</b>	<b>FY 2007</b>	<b>FY 2008</b>
Number of Justice Courts Providing Data	60	88
Blood Alcohol Content Known	803	1,672
Substance Abuse Screening and Assessment Ordered	796	1,104
Substance Abuse Treatment Ordered	580	819
Educational Series Ordered	652	1,058
Ignition Interlock Ordered	338	358
Supervised (Non-Court) Probation	329	1,244
Electronic Monitoring	29	36
Enhancement Notification	777	1,278

Source: Utah Department of Public Safety, Bureau of Criminal Identification

### District Court DUI Data

#### District Court DUI Case Outcomes

The table below shows case outcomes by Judicial District for the 2,052 DUI cases processed by Utah's eight District Courts during FY 2008.

<b>FY 2008 District Court DUI Case Filings and Outcomes</b>										
<b>DUI Case Outcomes</b>	<b>Judicial District</b>								<b>Total</b>	<b>Percent</b>
	<b>1<sup>st</sup></b>	<b>2<sup>nd</sup></b>	<b>3<sup>rd</sup></b>	<b>4<sup>th</sup></b>	<b>5<sup>th</sup></b>	<b>6<sup>th</sup></b>	<b>7<sup>th</sup></b>	<b>8<sup>th</sup></b>		
Deceased			2						<b>2</b>	<b>0.1%</b>
Declined Prosecution			1		2				<b>3</b>	<b>0.1%</b>
Dismissed	72	64	96	59	10	14	7	10	<b>332</b>	<b>16.2%</b>
Diversion				1					<b>1</b>	<b>0.0%</b>
Guilty	97	380	429	337	110	50	60	100	<b>1,563</b>	<b>76.2%</b>
No Contest	1	6	6	21	3			1	<b>38</b>	<b>1.9%</b>
Not Guilty			3		1				<b>4</b>	<b>0.2%</b>
Plea in Abeyance		4	4	10	2		4	1	<b>25</b>	<b>1.2%</b>
Remanded	2	2	28	3	4				<b>39</b>	<b>1.9%</b>
Transferred	1	4	7	31			2		<b>45</b>	<b>2.2%</b>
<b>TOTAL</b>	<b>173</b>	<b>460</b>	<b>576</b>	<b>462</b>	<b>132</b>	<b>64</b>	<b>73</b>	<b>112</b>	<b>2,052</b>	<b>100.0%</b>

Source: Utah Administrative Office of the Courts

Seventy-six percent of the cases resulted in a guilty plea or verdict. The defendant was found not guilty in only four cases. In 16 percent of the cases, the case was either dismissed or declined for prosecution. It should be noted that this table is not an accurate depiction of the District Courts' DUI conviction rates, as it only examined cases that were disposed of during FY 2008. Pending cases were not included in the data analysis.

**District Court Repeat Offender Data**

The District Courts track how repeat DUI offenders are handled as well. In the table below, which includes data for Fiscal Year 2006 through Fiscal Year 2008, the first column shows if the offender was charged as a first-time offender or a repeat offender. The second column indicates how many of those in the first column actually met that criterion. The last column shows how the offender was sentenced.

In FY 2008 for example, 30 percent of DUI offenders were charged with a third offense, while 22 percent were actually third-time offenders, and 24 percent were sentenced as third-time offenders. Discrepancies between charges and sentencing are not unusual. An offender's sentence is dependent upon the conviction, which may or may not be the same as the offense charged due to plea bargains or court procedural issues.

<b>District Court Repeat DUI Offender Data for Fiscal Years 2006-2008<sup>4</sup></b>									
<b>Offense</b>	<b>Offense Was Charged As</b>			<b>Offense Was Actually</b>			<b>Offense Was Sentenced As</b>		
	<b>FY 06</b>	<b>FY 07</b>	<b>FY 08</b>	<b>FY 06</b>	<b>FY 07</b>	<b>FY 08</b>	<b>FY 06</b>	<b>FY 07</b>	<b>FY 08</b>
1 <sup>st</sup> Offense	59%	51%	48%	53%	49%	46%	59%	54%	50%
2 <sup>nd</sup> Offense	15%	16%	18%	22%	17%	23%	21%	17%	21%
3 <sup>rd</sup> Offense	22%	28%	30%	17%	26%	22%	16%	24%	24%
4 <sup>th</sup> Offense	2%	3%	2%	3%	3%	4%	2%	3%	3%
5 <sup>th</sup> or More Offense	2%	2%	2%	5%	5%	5%	2%	2%	2%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Source: Utah Administrative Office of the Courts

**District Court DUI Sanctions**

The District Courts also track DUI-related case information regarding sanctions ordered. The table on the following page shows in 603 cases the blood alcohol content was known. The table further shows judges ordered offenders to participate in an educational series in 40 percent of cases, substance abuse treatment in 62 percent of cases, and that ignition interlock devices were ordered in 353 cases. DUI offenders were notified 100 percent of the time that they may be subject to enhancements.

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<sup>4</sup> The cases in the table represent only those for which the number of the offense was known. In addition, the following cases were not included: bail forfeiture, deceased, declined, dismissed, not guilty, remanded, and transferred.

<b>District Court DUI Sanctions</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
Blood Alcohol Content Known	857	607	603
Substance Abuse Screening and Assessment Ordered	774 (58.6%)	620 (63.7%)	646 (61.9%)
Substance Abuse Treatment Ordered	747 (57.0%)	626 (64.3%)	633 (62.0%)
Educational Series Ordered	573 (44.2%)	444 (45.7%)	417 (40.2%)
Ignition Interlock Ordered	432	288	353
Supervised (Non-Court) Probation	335	516	711
Electronic Monitoring	141	119	174
Enhancement Notification	100.0%	100%	100%
Source: Utah Administrative Office of the Courts			

### Other DUI Sanctions

The Driver License Division tracks other DUI sanctions. The following table lists the average sanctions applied against DUI offenders. Not all offenders are ordered to serve a jail sentence or perform community service hours; however, all convicted DUI offenders are assessed a fine and a surcharge. For a first offense, the minimum fine is \$700; for a second offense within 10 years, the minimum fine is \$800; and for a third or subsequent offense, the minimum fine is \$1,500.

<b>Average Jail Sentence, Community Service Hours and Fines</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
Average Jail Sentence	147.9 days	171.2 days	145.9 days
Average Community Service Hours	61.9 hours	78.9 hours	96.0 hours
Average Fine for Other Alcohol/ Drug Related Convictions	\$1,378.53	\$1,321.93	\$1,213.52
Average Fine for DUI Convictions	\$1,498.22	\$1,528.52	\$1,488.50
Source: Utah Department of Public Safety, Driver License Division			

Driver License  
Control

4

## Driver License Control

The Department of Public Safety's Driver License Division is required to suspend or revoke the license of a person who has been convicted or sanctioned for the following:

- Driving under the influence
- Driving with any measurable controlled substance or metabolite in the body
- Refusal to submit to a chemical test
- Automobile homicide
- "No-alcohol" conditional license
- Alcohol restricted driver (ARD) violation
- Interlock restricted driver (IRD) conviction

### Alcohol Hearing Statistics

When a driver is arrested for DUI, the license is taken and a 30-day temporary license is issued. Drivers may request a license hearing within 10 days, and the Driver License Division must schedule the hearing within the 30-day period of the temporary license.

As shown in the table below, there were 4,703 alcohol hearings held in FY 2008. The Division is unable to take any action against a driver if the arresting officer does not appear at the hearing. To improve appearance rates, the Division offers a telephonic option, whereby officers or offenders can phone in for the hearing. In 1,969 cases, one of the parties called in for the hearing.

FY 2008 Alcohol Hearing Statistics						
ACD Code	Total # of Hearings	No Officer	No Officer Telephonic	Other No Action	Total No Action	Total Telephonic
Per Se	3,983	811	120	619	1,550	1,651
Not a Drop	201	34	6	11	51	79
Refusal	519	89	22	64	175	239
<b>TOTAL</b>	<b>4,703</b>	<b>934</b>	<b>148</b>	<b>694</b>	<b>1,776</b>	<b>1,969</b>

Source: Utah Department of Public Safety, Driver License Division



## Screening, Assessment, Education and Treatment

### Screening and Assessment

As part of any sentence for a DUI offense, Utah law requires offenders to participate in a screening and, if indicated by the screening, an assessment. A screening involves gathering information that is used to determine if an individual has a problem with alcohol/other drug abuse, and if so, whether an in-depth clinical assessment is appropriate. An assessment is a collection of detailed information concerning the individual's alcohol/other drug abuse, emotional and physical health, social roles, and other relevant areas of the individual's life. The assessment is used to determine the need for substance abuse treatment.<sup>5</sup>

### Education

For a first offense and for a second offense within 10 years, the sentence must include participation in an educational series if the court does not order treatment. The purpose of DUI education is to “address any problems or risk factors that appear to be related to use of alcohol and other drugs and attempt to help the individual recognize the harmful consequences of inappropriate use, with special emphasis placed on the dangers of drinking and driving.”<sup>6</sup> Utah DUI offenders sentenced to an educational series attend the PRIME for Life program developed by the Prevention Research Institute (PRI). The 16-hour curriculum presents research-based information about the risks associated with

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<sup>5</sup> Center for Substance Abuse Treatment, *Screening and Assessment for Alcohol and Other Drug Abuse Among Adults in the Criminal Justice System*, Treatment Improvement Protocol (TIP) Series, #7.

<sup>6</sup> Utah Sentencing Commission, *DUI Best Sentencing Practices Guidebook*, 2003.

alcohol and other drug use that helps participants identify lifestyle choices to reduce their personal risks<sup>7</sup>.

PRI conducts periodic studies of PRIME for Life participants to measure the impact on changing beliefs about alcohol use, understanding the risks associated with alcohol use, and desire to change personal drinking behavior. In previous years this study was published annually, however, because the findings have been virtually identical from year to year, PRI now publishes the study biennially. The next study, which will provide Utah data for 2008, was not available in time for inclusion in this report.

## Treatment

For a first and second DUI offense, the court *may* order treatment; for a third or subsequent offense within 10 years, the court *must* order substance abuse treatment. "Treatment involves the application of planned procedures to identify and change patterns of behavior that are maladaptive, destructive, and/or injurious to health; or to restore appropriate levels of physical, psychological and/or social functioning. DUI offenders assessed as meeting the diagnostic criteria for a substance use disorder should participate in a treatment program in addition to, or in lieu of, the educational course."<sup>8</sup> Treatment should address both alcohol and other drug problems. The level of treatment needed (e.g., day treatment, outpatient, intensive outpatient, residential) is determined by the assessment on the basis of the severity of the substance abuse disorder.

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<sup>7</sup> Prevention Research Institute, PRIME for Life Utah 2004.

<sup>8</sup> Utah Sentencing Commission, *DUI Best Sentencing Practices Guidebook*, 2003.

Impaired  
Driving Media  
Campaign  
**6**

## Utah's Impaired Driving Media Campaign



During FY 2008, the Utah Department of Public Safety's Highway Safety Office statewide media and outreach campaign focused primarily on the 21-34 year old male. This targeted demographic frequents or visits bars, clubs and the social scene. The secondary target was 19-27 year old college students and seniors in high school. Both demographics are active young adults who often drink socially. Highway Safety also developed private partnerships with local taxicabs to encourage those who drink to "take a cab". The Highway Safety Office continues to work to change Utah citizens' perceptions and behaviors regarding driving under the influence of alcohol, and to reinforce the message that impaired driving is one of the most frequently committed and deadliest crimes.

Utah's multi-media campaign builds on the National Highway Traffic Safety Administration's (NHTSA) television and radio ads and includes billboards, posters, napkins and coasters utilized inside bars and taverns, as well as a restroom stall wrapped to look like a jail cell with the message: *"There's a for people who drink and drive. It looks kind of like this."*



### Taxicab Art

**If you get a buzz,  
give me one.**  
**801.363.5550**

**Drinking?**  
Put me on your speed dial.  
**801-521-2100**

### Billboard







## Recommended Action

The Utah Substance Abuse and Anti-Violence (USAAV) Coordinating Council's DUI Subcommittee recommends the following action by the Utah Legislature:

### ■ **Create Incentives for DUI Offenders to Complete Court-Ordered Sanctions, Including Substance Abuse Treatment**

- Provide for the exclusion of a conviction for impaired driving from a person's motor vehicle record if: the reporting court notifies the Driver License Division that the defendant is participating in or has successfully completed a DUI Court program, and the court administering the program is approved as a DUI Court by the Utah Judicial Council (*does not apply to commercial driver licensees or violations that occur in a commercial motor vehicle*).
- Provide that the Driver License Division shall reinstate a person's driver license prior to completion of the 90 day suspension period immediately upon receiving written verification of the person's conviction for impaired driving if: the written verification is received prior to the completion of the suspension period, the reporting court notifies the Driver License Division that the defendant is participating in or has successfully completed a DUI Court program, and the court administering the program is approved as a DUI Court by the Utah Judicial Council.
- Provide that if an impaired driving conviction is amended to a DUI conviction, the Driver License Division may not subtract from any suspension or revocation any time for which a license was previously suspended or revoked, and shall start the suspension or revocation time on the date of the amended conviction.

### Rationale for Recommendation

The 2004 Utah Legislature passed *S.B. 20 – Driving Under the Influence Amendments*, which outlined the circumstances under which a plea held in abeyance could and could not be used in DUI cases, and enacted a prohibition on the use of pleas in abeyance in DUI cases as of July 1, 2006. The bill also required the Utah Commission on Criminal and Juvenile Justice to study the use of pleas in abeyance in DUI cases and to report the findings to the Transportation Interim Committee. In order to allow additional time to determine the impact of using pleas in abeyance in DUI cases, the 2006 Utah Legislature subsequently passed *S.B. 18 – Driving Under the Influence Amendments*, which extended the use of pleas in abeyance in DUI cases until July 1, 2008.

The Commission on Criminal and Juvenile Justice report on “DUI and Pleas in Abeyance” was completed in October 2005 and provided a comparison of two Justice Courts, one that utilized a plea in abeyance in DUI cases, and one that did not. The report concluded that while one court experienced a higher treatment success rate among DUI offenders than the other court, an overwhelming majority of offenders successfully completed treatment in both courts, and that it would be difficult, if not impossible, to attribute the higher treatment success rate in the one court to the use of pleas in abeyance. The report, however, did not resolve the disagreement between those who advocated for continued use of pleas in abeyance and those who were opposed to pleas in abeyance in all DUI cases. Advocates felt the plea in abeyance option provided a critical incentive for offenders to complete court-ordered programs, especially substance abuse treatment. Opponents felt the dismissal of DUI charges upon successful completion of court-ordered programs was an inappropriate outcome for a crime that caused so much heartache for its victims and their loved ones.

A mutually acceptable agreement was reached during the 2008 Legislative Session when interested parties agreed to allow the plea in abeyance option in DUI cases to sunset as scheduled on July 1, 2008, if the Utah Substance Abuse and Anti-Violence (USA AV) Coordinating Council’s DUI Subcommittee agreed to identify other incentives for DUI offenders to complete court-ordered substance abuse treatment and other programs. On February 22, 2008, USA AV joined with the Statewide Association of Prosecutors and Mothers Against Drunk Driving/Utah Chapter in signing a “Joint Statement of USA AV DUI Subcommittee Priority for 2008-2009” as follows:

*“This Joint Statement is a commitment of the Utah Substance Abuse and Anti-Violence (USA AV) Coordinating Council’s DUI Subcommittee, the Utah Statewide Association of Prosecutors and Mothers Against Drunk Driving/Utah Chapter to make our top priority for 2008-09 the identification of incentives for DUI offenders to successfully complete all court-ordered programs, including substance abuse treatment. We will specifically address viable sanctions and incentives to encourage participation in special DUI Court programs. Based*

*upon the sanctions and incentives identified by the DUI Subcommittee, we will recommend legislation for the 2009 General Session.”*

The recommendations on page 31 constitute the offender incentives identified by the DUI Subcommittee to take the place of pleas in abeyance in certain DUI cases.

## ■ **Amend the Not a Drop Statute to Address Individuals Who Are Unable to Complete Recommended Action**

- Provide that the requirement that the reinstatement of a person’s license for a person under 21 years of age operating a vehicle with a detectable amount of alcohol in the person’s body is contingent upon the person’s completion of an action recommended by a local substance abuse authority or a substance abuse program is only applicable within five years after the effective date of the license sanction.

### Rationale for Recommendation

The Not a Drop statute prohibits any person under the legal drinking age of 21 from operating a motor vehicle with any measurable alcohol in their body. The penalty for a violation includes suspension of the person’s driver license or, if the person has not yet been issued a driver license, a denial of the person’s application for a license or learner’s permit. In addition to the driver license penalty, any person who violates the statute is required to obtain an assessment and recommendation for appropriate action from a substance abuse program. The recommendation for appropriate action may include a targeted education and prevention program, an early intervention program, or a substance abuse treatment program. Reinstatement of the driver license or right to obtain a license is contingent upon successful completion of the action recommended by the substance abuse program.

Although the requirement regarding assessment and completion of a recommended substance abuse program currently exists in statute, there is not currently a time limit specified for this requirement. This is problematic for individuals who have moved out of state and have obtained a license in their new state of residence. Both the Driver License Division and the Division of Substance Abuse and Mental Health receive numerous telephone inquiries from individuals who find themselves in this situation, have never had a subsequent offense, are well over the age of 21, and do not have the ability to have an assessment completed in order to reinstate the Utah record. As a result, their license in their home state becomes invalid. Adding a time limit for the requirement will allow Utah to address the issues of assessment and education for underage drivers without creating undue hardship for individuals in certain circumstances.

■ **Eliminate the Requirement that Administrative Alcohol Hearings Must be Held in the County of Arrest**

Rationale for Recommendation

Implementation of the Real Id Act will require that all Driver License facilities be equipped with security monitoring and document scanning equipment. This will result in a necessity to discontinue services through travel stations to some of the more rural areas for licensing purposes. Continuing to pay for the use of travel locations solely for the purpose of conducting administrative hearings will not be cost effective for the Driver License Division.

On September 18, 2008, the Driver License Division opened its new “South Valley” facility in the Draper area that will be closer for individuals to travel to from the northern end of Utah County. If the requirement to hold an administrative alcohol or drug hearing in the county of arrest were lifted, staff at the South Valley office would be able to conduct the hearings for the northern part of Utah County instead of having law enforcement officials and customers travel to the Orem office to appear for a hearing.

In addition, the Driver License Division has the ability to conduct telephonic hearings as a convenience for both law enforcement and the defense/arrested individual. Removing the county of arrest requirement would allow for telephonic hearings where both parties intend to appear telephonically to be held at any office and would allow for more flexibility in management of the Division’s resources.

# UTAH DUI SENTENCING MATRIX

(Current as of October 2008)

	MISDEMEANOR DUI		FELONY DUI
	FIRST OFFENSE	SECOND OFFENSE WITHIN 10 YEARS	
<b>CLASSIFICATION</b> (§41-6a-503)	<b>CLASS B MISDEMEANOR</b>  <b>CLASS A MISDEMEANOR:</b> <ul style="list-style-type: none"> <li>• if bodily injury</li> <li>• if passenger is under 16</li> <li>• if passenger is under 18 and driver is 21 or older</li> </ul>	<b>CLASS B MISDEMEANOR</b>  <b>CLASS A MISDEMEANOR:</b> <ul style="list-style-type: none"> <li>• if bodily injury</li> <li>• if passenger under 16</li> <li>• if passenger is under 18 and driver is 21 or older</li> </ul>	<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</li> <li>• if any prior felony DUI conviction or automobile homicide conviction</li> </ul>
<b>SENTENCING Jail – SHALL order:</b> (§41-6a-505)	48 consecutive hours <b>OR</b> 48 hours compensatory service <b>OR</b> electronic home confinement <sup>1</sup>	240 consecutive hours <b>OR</b> 240 hours compensatory service <b>OR</b> electronic home confinement <sup>1</sup>	0-5 year prison term <b>OR</b> 1,500 hours jail (62.5 days) May also require electronic home confinement <sup>1</sup>
<b>Fine – SHALL order:</b> (§41-6a-505)	\$700 minimum plus surcharge	\$800 minimum plus surcharge	\$1,500 minimum plus surcharge, unless 0-5 prison term is imposed
<b>Screening, Assessment, Education Series, Treatment – SHALL order:</b> (§41-6a-505)	<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> <li>• <b>MAY</b> order treatment</li> </ul>	<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> <li>• <b>MAY</b> order treatment</li> </ul>	<ul style="list-style-type: none"> <li>• Screening</li> <li>• Assessment</li> <li>• Intensive treatment or inpatient treatment and aftercare for not less than 240 hours</li> </ul>
<b>Probation:<sup>2</sup></b> (§41-6a-507)	<b>MAY</b> order supervised probation	<b>SHALL</b> order supervised probation	<b>SHALL</b> order supervised probation if 0-5 prison term is not imposed
<b>Ignition Interlock:<sup>3</sup></b> (§41-6a-518) (§41-6a-530)	<ul style="list-style-type: none"> <li>• <b>MAY</b> order interlock</li> <li>• <b>SHALL</b> order interlock if under 21</li> <li>• <b>SHALL</b> order interlock for an ARD violation <b>OR</b> describe on the record why such order not appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• <b>MAY</b> order interlock</li> <li>• <b>SHALL</b> order interlock if under 21</li> <li>• <b>SHALL</b> order interlock for an ARD violation <b>OR</b> describe on the record why such order not appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• <b>MAY</b> order interlock</li> <li>• <b>SHALL</b> order interlock if under 21</li> <li>• <b>SHALL</b> order interlock for an ARD violation <b>OR</b> describe on the record why such order not appropriate</li> </ul>
<b>High BAC: (.16 or higher)</b> (§41-6a-505)	<ul style="list-style-type: none"> <li>• <b>SHALL</b> order supervised probation<sup>2</sup></li> <li>• <b>SHALL</b> order treatment <b>and</b> interlock<sup>3</sup> and/or home confinement<sup>1</sup> <b>OR</b> describe on the record why such order(s) not appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• <b>SHALL</b> order supervised probation<sup>2</sup></li> <li>• <b>SHALL</b> order treatment <b>and</b> interlock<sup>3</sup> and/or home confinement<sup>1</sup> <b>OR</b> describe on the record why such order(s) not appropriate</li> </ul>	<ul style="list-style-type: none"> <li>• <b>SHALL</b> order supervised probation<sup>2</sup> if 0-5 prison term is not imposed</li> <li>• <b>SHALL</b> order treatment <b>and</b> interlock<sup>3</sup> and/or home confinement<sup>1</sup> <b>OR</b> describe on the record why such order(s) not appropriate</li> </ul>
<b>License Suspension:</b> (§41-6a-509)	Court <b>MAY</b> order <b>additional</b> 90 days, 180 days, 1 year or 2 years	Court <b>MAY</b> order <b>additional</b> 90 days, 180 days, 1 year or 2 years	Court <b>MAY</b> order <b>additional</b> 90 days, 180 days, 1 year or 2 years

<sup>1</sup> See §41-6a-506 for electronic home confinement provisions.

<sup>2</sup> Supervised probation is also required for all violations of §41-6a-517 (driving with any measurable controlled substance in the body).

<sup>3</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.



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