

## CHAPTER 20

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#### **20.1 GENERALLY**

The Utah Code provides for a number of offenses which are related, or spring from impaired driving offenses. These range from lesser-included offenses, license restrictions, and even the legal fiction of alcohol-related reckless driving.

In screening cases which allege any of the following offenses, prosecutors should also determine whether the circumstances justify the filing of impaired driving or other serious crimes.

#### **20.2 RECKLESS DRIVING**

Reckless driving is a common plea negotiation tool, although non-alcohol-related reckless driving should be used extremely rarely in the negotiation of impaired driving cases. Generally, this charge should only be used as a

negotiated plea when evidentiary problems will nearly guarantee a verdict of not guilty and the circumstances of the case would prefer a very minor sanction to a complete dismissal or acquittal. Unlike ARR, “straight reckless” does not result in automatic license suspension, nor does it apply toward enhancement of future DUI offenses.

The text of the statute reads as follows:

**41-6a-528. Reckless driving - Penalty.**

- (1) A person is guilty of reckless driving who operates a vehicle:
  - (a) in willful or wanton disregard for the safety of persons or property; or
  - (b) while committing three or more moving traffic violations under Title 41, Chapter 6a, Traffic Code, in a series of acts within a single continuous period of driving.
- (2) A person who violates Subsection (1) is guilty of a class B misdemeanor.

Although it has not yet been addressed by the appellate courts, there is a concern that ¶(1)(b) could present some problems with its validity. Essentially, this paragraph creates a way to prosecute a defendant for reckless driving, an intent-based crime, for three strict liability traffic offenses. Prosecutors should be aware of this concern and be prepared to meet any motions or objections to cases brought under ¶(1)(b).

## **20.3 ALCOHOL-RELATED RECKLESS DRIVING**

Alcohol-Related Reckless Driving is a legal fiction that has been created to allow defendants to plead to an offense that does not carry the specific minimum mandatory penalties of a DUI, yet still would apply to a future enhancement for subsequent impaired driving cases. It is not defined within the statute; nor is there a specific code citation to cite beyond §41-6a-528.

However; §41-6a-501(2)(a)(ii), states that;

(2) As used in Section 41-6a-503 (*dui penalties section*):

(a) "Conviction" means any conviction for a violation of:

(i) driving under the influence under Section 41-6a-502;

(ii) **alcohol, any drug, or a combination of both-related reckless driving** under Sections 41-6a-512 and 41-6a-528;

*emphasis and comment added*

Additionally, §41-6a-512 states that:

**41-6a-512. Factual basis for alcohol or drug-related reckless driving plea.**

(1) (a) The prosecution shall state for the record a factual basis for a plea, including whether or not there had been consumption of alcohol, drugs, or a combination of both, by the defendant in connection with the violation when the prosecution agrees to a plea of guilty or no contest to a charge of a violation of the following in satisfaction of, or as a substitute for, an original charge of a violation of Section 41-6a-502:

- (i) reckless driving under Section 41-6a-528; or
- (ii) an ordinance enacted under Section 41-6a-510.

(b) The statement under Subsection (1)(a) is an offer of proof of the facts that shows whether there was consumption of alcohol, drugs, or a combination of both, by the defendant, in connection with the violation.

(2) The court shall advise the defendant before accepting the plea offered under this section of the consequences of a violation of Section 41-6a-528.

(3) The court shall notify the Driver License Division of each conviction of Section 41-6a-528 entered under this section.

(4) (a) The provisions in Subsections 41-6a-505(1), (2), and (3) that require a sentencing court to order a convicted person to participate in a screening, an assessment, or an educational series or obtain substance

abuse treatment or do a combination of those things, apply to a conviction for a violation of Section 41-6a-528 under Subsection (1).

(b) The court shall render the same order regarding screening, assessment, an educational series, or substance abuse treatment in connection with a first, second, or subsequent conviction under Section 41-6a-528 under Subsection (1), as the court would render in connection with applying respectively, the first, second, or subsequent conviction requirements of Subsections 41-6a-505(1), (2), and (3).

Note that the alcohol or substance abuse treatment provisions of DUI sentencing are also applicable to ARR sentencing.

## 20.4 YOUTH “NOT-A-DROP” DUI

Although not specifically titled “Not-A-Drop DUI”, it is the common nomenclature for the prohibition on persons under the age of 21 from driving with *any* alcohol in their system. Additionally, this is not a criminal offense under title 76, but rather a driver license violation that will be adjudicated by DLD. Prosecutors should; however, consider these cases for prosecution under various other statutes including any moving violations that were observed, open container, and/or underage possession or consumption of alcohol.

The relevant statutory language relating to this violation is Utah Code Ann. § 53-3-231:

### **53-3-231. Person under 21 may not operate a vehicle or motorboat with detectable alcohol in body**

\* \* \*

(2) (a) A person younger than 21 years of age may not operate or be in actual physical control of a vehicle or motorboat with any measurable blood, breath, or urine alcohol concentration in the person's body as shown by a chemical test.

(b) (i) A person with a valid operator license who violates Subsection (2)(a), in addition to any other applicable penalties arising out of the incident, shall

have the person's operator license denied or suspended as provided in Subsection (2)(b)(ii).

(ii) (A) For a first offense under Subsection (2)(a), the division shall deny the person's operator license if ordered or not challenged under this section for a period of 90 days beginning on the 30th day after the date of the arrest under Section 32A-12-209.

(B) For a second or subsequent offense under Subsection (2)(a), within three years of a prior denial or suspension, the division shall suspend the person's operator license for a period of one year beginning on the 30th day after the date of arrest.

(c) (i) A person who has not been issued an operator license who violates Subsection (2)(a), in addition to any other penalties arising out of the incident, shall be punished as provided in Subsection (2)(c)(ii).

(ii) For one year or until the person is 17, whichever is longer, a person may not operate a vehicle and the division may not issue the person an operator license or learner's permit.

(3) (a) When a peace officer has reasonable grounds to believe that a person may be violating or has violated Subsection (2), the peace officer may, in connection with arresting the person for a violation of Section 32A-12-209, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6a-520.

## 20.5 OPEN CONTAINER

The open container and related offenses are targeted to eliminate the risk of a driver having access to alcoholic beverages in a vehicle while driving. Unlike the DUI offenses, open container only applies when a vehicle is on a public highway, not on private property or non-highway public property.

### 20.5.1 DEFINITIONS

**41-6a-526. Drinking alcoholic beverage and open containers in motor vehicle prohibited - Definitions**

(1) As used in this section:

(a) "Alcoholic beverage" has the same meaning as defined in Section 32A-1-105.

(b) "Chartered bus" has the same meaning as defined in Section 32A-1-105.

(c) "Limousine" has the same meaning as defined in Section 32A-1-105.

(d) (i) "Passenger compartment" means the area of the vehicle normally occupied by the operator and passengers.

(ii) "Passenger compartment" includes areas accessible to the operator and passengers while traveling, including a utility or glove compartment.

(iii) "Passenger compartment" does not include a separate front or rear trunk compartment or other area of the vehicle not accessible to the operator or passengers while inside the vehicle.

## **20.5.2 PROHIBITIONS AND PENALTIES**

### **41-6a-526. Drinking alcoholic beverage and open containers in motor vehicle prohibited \* \* \* Exceptions.**

(2) A person may not drink any alcoholic beverage while operating a motor vehicle or while a passenger in a motor vehicle, whether the vehicle is moving, stopped, or parked on any highway.

(3) A person may not keep, carry, possess, transport, or allow another to keep, carry, possess, or transport in the passenger compartment of a motor vehicle, when the vehicle is on any highway, any container which contains any alcoholic beverage if the container has been opened, its seal broken, or the contents of the container partially consumed.

(4) Subsections (2) and (3) do not apply to a passenger:

(a) in the living quarters of a motor home or camper;

(b) who has carried an alcoholic beverage onto a limousine or chartered

bus that is in compliance with Subsections 32A-12-213(3)(b) and (c); or

(c) in a motorboat or on the waters of this state as these terms are defined in Section 73-18-2.

(5) Subsection (3) does not apply to passengers traveling in any licensed taxicab or bus.

## **20.6 ALCOHOL-RESTRICTED DRIVER**

Persons who have been convicted of certain offenses or refused to submit to chemical test may be placed on Alcohol-Restricted Driver ("ARD") status. In addition to criminal penalties, additional driver license restrictions will apply.

### **20.6.1 DEFINITIONS**

#### **41-6a-529. Definitions - Alcohol restricted drivers.**

(1) As used in this section and section 41-6a-530, "alcohol restricted driver" means a person who:

(a) within the last two years:

(i) has been convicted of:

(A) a misdemeanor violation of Section 41-6a-502;

(B) alcohol, any drug, or a combination of both-related reckless driving under Section 41-6a-512;

(C) local ordinances similar to Section 41-6a-502 or alcohol, any drug, or a combination of both-related reckless driving adopted in compliance with Section 41-6a-510;

(D) a violation described in Subsections (1)(a)(i)(A) through (C), which judgment of conviction is reduced under Section 76-3-402; or

(E) statutes or ordinances previously in effect in this state or in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of both-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815; or

(ii) has had the person's driving privilege suspended under Section 53-3-223 for an alcohol-related offense based on an arrest which occurred on or after July 1, 2005;

(b) within the last three years has been convicted of a violation of this section or Section 41-6a-518.2;

(c) within the last five years:

(i) has had the person's driving privilege revoked for refusal to submit to a chemical test under Section 41-6a-520, which refusal occurred on or after July 1, 2005; or

(ii) (A) has been convicted of an offense described in Subsection (1)(a)(i); and

(B) at the time of operation or actual physical control of a vehicle the person:

(I) is 21 years of age or older; and

(II) has a passenger under 16 years of age in the vehicle;

(d) within the last ten years:

(i) has been convicted of an offense described in Subsection (1)(a)(i) which conviction was within ten years of a prior conviction for an offense described in Subsection (1)(a)(i); or

(ii) has had the person's driving privilege revoked for refusal to submit to a chemical test and the refusal is within ten years after:

(A) a prior refusal to submit to a chemical test under Section 41-6a-520; or

(B) a prior conviction for an offense described in Subsection (1)(a)(i) which is not based on the same arrest as the refusal; or

(e) at any time has been convicted of:

(i) automobile homicide under Section 76-5-207 for an offense that occurred on or after July 1, 2005; or

(ii) a felony violation of Section 41-6a-502 for an offense that occurred on or after July 1, 2005.

(2) For purposes of this section and Section 41-6a-530, a plea of guilty or no contest to a violation described in Subsection (1)(a)(i) which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

## **20.6.2 PROHIBITIONS AND PENALTIES**

### **41-6a-530. Alcohol restricted drivers - Prohibited from operating a vehicle while having any measurable or detectable amount of alcohol in the person's body - Penalties.**

(1) An alcohol restricted driver who operates or is in actual physical control of a vehicle in this state with any measurable or detectable amount of alcohol in the person's body is guilty of a class B misdemeanor.

(2) A "measurable or detectable amount" of alcohol in the person's body may be established by:

(a) a chemical test;

(b) evidence other than a chemical test; or

(c) a combination of Subsections (2)(a) and (b).

(3) For any person convicted of a violation of this section, the court shall order the installation of an ignition interlock system as a condition of probation in accordance with Section 41-6a-518 or describe on the record or in a minute entry why the order would not be appropriate.

## 20.7 INTERLOCK-RESTRICTED DRIVER

### 20.7.1 DEFINITIONS

#### **41-6a-518.2. Interlock restricted driver - Penalties for operation without ignition interlock system.**

(1) As used in this section:

(a) "ignition interlock system" means a constant monitoring device or any similar device that:

(i) is in working order at the time of operation or actual physical control; and

(ii) is certified by the Commissioner of Public Safety in accordance with Subsection 41-6a-518(8); and

(b) (i) "interlock restricted driver" means a person who:

(A) has been ordered by a court or the Board of Pardons and Parole as a condition of probation or parole not to operate a motor vehicle without an ignition interlock system;

(B) (I) within the last three years has been convicted of an offense that occurred after May 1, 2006 which would be a conviction as defined under Section 41-6a-501; and

(II) the conviction described under Subsection (1)(b)(i)(B)(I) is within ten years of one or more prior convictions as defined in Subsection 41-6a-501(2);

(C) within the last three years has been convicted of a violation of this section;

(D) within the last three years has had the person's driving privilege revoked for refusal to submit to a chemical test under Section 41-6a-520, which refusal occurred after May 1, 2006;

(E) within the last six years has been convicted of a felony violation of Section 41-6a-502 for an offense that occurred after May 1, 2006; or

(F) within the last ten years has been convicted of automobile homicide under Section 76-5-207 for an offense that occurred after May 1, 2006; and

(ii) "interlock restricted driver" does not include a person if:

(A) the person's conviction described in Subsection (1)(b)(i)(B)(I) is a conviction under Section 41-6a-517; and

(B) all of the person's prior convictions described in Subsection (1)(b)(i)(B)(II) are convictions under Section 41-6a-517.

(2) For purposes of this section, a plea of guilty or no contest to a violation of Section 41-6a-502 which plea is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

## **20.7.2 PROHIBITIONS AND PENALTIES**

### **41-6a-518.2. Interlock restricted driver - Penalties for operation without ignition interlock system.**

\* \* \*

(3) An interlock restricted driver that operates or is in actual physical control of a vehicle in this state without an ignition interlock system is guilty of a class B misdemeanor.

(4) (a) It is an affirmative defense to a charge of a violation of Subsection (3) if:

(i) an interlock restricted driver:

(A) operated or was in actual physical control of a vehicle owned by the interlock restricted driver's employer;

(B) had given written notice to the employer of the interlock restricted driver's interlock restricted status prior to the operation or actual physical control under Subsection (4)(a)(i); and

(C) had on the interlock restricted driver's person or in the vehicle at the time of operation or physical control proof of having given notice to the interlock restricted driver's employer; and

(ii) the operation or actual physical control under Subsection (4)(a)(i)(A) was in the scope of the interlock restricted driver's employment.

(b) The affirmative defense under Subsection (4)(a) does not apply to:

(i) an employer-owned motor vehicle that is made available to an interlock restricted driver for personal use; or

(ii) a motor vehicle owned by a business entity that is all or partly owned or controlled by the interlock restricted driver.

## 20.8 COMMERCIAL DRIVERS

Persons holding a Commercial Driver License (“CDL”) are held to a higher standard than other drivers due to the number of miles professional drivers drive as well as the generally larger and more dangerous vehicles they operate. Again, these persons are subject to the same DUI laws as any other driver, but their privilege as a CDL holder will be in jeopardy if they are apprehended with a BAC in excess of .04. The relevant statutory language is as follows:

### **53-3-418. Prohibited alcohol level for drivers - Procedures, including hearing.**

(1) A person who holds or is required to hold a CDL may not drive a commercial motor vehicle in this state if the person:

(a) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .04 grams or greater at the time of the test after the alleged driving of the commercial motor vehicle;

(b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to degree that renders the person incapable of safely driving a commercial motor vehicle; or

(c) has a blood or breath alcohol concentration of .04 grams or greater at the time of driving the commercial motor vehicle.

(2) A person who holds or is required to hold a CDL and who drives a commercial motor vehicle in this state is considered to have given the person's consent to a test or tests of the person's blood, breath, or urine to determine the concentration of alcohol or the presence of other drugs in the person's physical system.

(3) If a peace officer or port-of-entry agent has reasonable cause to believe that a person may be violating this section, the peace officer or port-of-entry agent may request the person to submit to a chemical test to be administered in compliance with Section 41-6a-515.

(4) When a peace officer or port-of-entry agent requests a person to submit to a test under this section, the peace officer or port-of-entry agent shall advise the person that test results indicating .04 grams or greater alcohol concentration or refusal to submit to any test requested will result in the person's disqualification under Section 53-3-414 from driving a commercial motor vehicle.

\* \* \*

12) (a) A person who violates this section shall be punished in accordance with Section 53-3-414.

(b) (i) In accordance with Section 53-3-414, the first disqualification under this section shall be for one year, and a second disqualification shall be for life.

(ii) A disqualification under Section 53-3-414 begins on the 30th day after the date of arrest.

(13) (a) In addition to the fees imposed under Section 53-3-205 for reinstatement of a CDL, a fee under Section 53-3-105 to cover administrative costs shall be paid before the driving privilege is reinstated.

(b) The fees under Sections 53-3-105 and 53-3-205 shall be canceled if an unappealed hearing at the division or court level determines the disqualification was not proper.

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