

# UTAH DUI STATUTORY OVERVIEW<sup>1,2</sup>

(Current as of May 2023)

Court-Ordered Sentencing		MISDEMEANOR DUI					
		FIRST CONVICTION	FIRST CONVICTION PLUS	SECOND CONVICTION WITHIN 10 YEARS	SECOND CONVICTION WITHIN 10 YEARS PLUS		
<b>FIRST CONVICTION</b> <ul style="list-style-type: none"> <li>• BAC .16 or higher</li> <li>• BAC .05 or higher + any controlled substance</li> <li>• Combination of two or more controlled substances</li> </ul>		<b>SECOND CONVICTION WITHIN 10 YEARS</b>		<b>SECOND CONVICTION WITHIN 10 YEARS PLUS</b> <ul style="list-style-type: none"> <li>• BAC .16 or higher</li> <li>• BAC .05 or higher + any controlled substance</li> <li>• Combination of two or more controlled substances<sup>2</sup></li> </ul>			
<b>CLASSIFICATION</b> (§41-6a-503)		<b>CLASS B MISDEMEANOR</b> <b>CLASS A MISDEMEANOR:</b> <ul style="list-style-type: none"> <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 divided or controlled-access highway</li> </ul>		<b>CLASS A MISDEMEANOR</b>			
<b>Jail</b> (§41-6a-505)		<b>SHALL</b> order: 2 days <b>OR</b> 48 hours compensatory service <b>MAY:</b> Suspend jail time if individual is participating in 24/7 sobriety program; <sup>6</sup> Convert jail time to electronic home confinement <sup>10</sup> or order two-day increments if requirements are met <sup>11</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> Suspend jail time if individual is participating in 24/7 sobriety program; <sup>6</sup> Convert jail time to electronic home confinement <sup>10</sup> or order two-day increments if requirements are met <sup>11</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> 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> Convert jail time to electronic home confinement <sup>10</sup> or order two-day increments if requirements are met <sup>11</sup>	<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 use tx (if tx is more likely to reduce recidivism and is in interest of public safety)</li> </ul> <b>MAY:</b> 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> Convert jail time to electronic home confinement <sup>10</sup> or order two-day increments if requirements are met <sup>11</sup>		
<b>Increased Sentencing</b> (§41-6a-505)		<b>SHALL</b> order unless described on the record why the order(s) not appropriate: <ul style="list-style-type: none"> <li>• Treatment <b>and</b></li> </ul> One or more of the following: <ul style="list-style-type: none"> <li>• Interlock</li> <li>• Ankle attached continuous transdermal alcohol monitoring device</li> <li>• Electronic home confinement</li> </ul>		<b>SHALL</b> order unless described on the record why the order(s) not appropriate: <ul style="list-style-type: none"> <li>• Treatment <b>and</b></li> </ul> One or more of the following: <ul style="list-style-type: none"> <li>• Interlock</li> <li>• Ankle attached continuous transdermal alcohol monitoring device</li> <li>• Electronic home confinement</li> </ul>			
<b>Supervised Probation<sup>7</sup></b> (§41-6a-507)		<b>MAY</b> order supervision		<b>SHALL</b> order supervised probation			

Court-Ordered Sentencing	MISDEMEANOR DUI	
	FIRST CONVICTION	SECOND CONVICTION WITH IN 10 YEARS
<b>Fine, Surcharge, and Court Security Fee</b> (§41-6a-505) (§51-9-401)	<b>SHALL</b> order: \$700 minimum fine plus a \$630 surcharge plus a \$60 court security fee (justice court) or \$53 (district court)	<b>SHALL</b> order: \$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> (§41-6a-505)	<b>SHALL</b> order: • Screening • Assessment (if found appropriate by screening) • Educational series, unless treatment is ordered <b>MAY</b> order: • Treatment 24-7 sobriety program	<b>SHALL</b> order: • Screening • Assessment (if found appropriate by screening) • Educational series, unless treatment is ordered <b>MAY</b> order: • Treatment 24-7 sobriety program
<b>Impaired Driving</b> (§41-6a-502.5)	A conviction may <b>NOT</b> be entered as impaired driving if: • BAC .16 or higher; • BAC .05 or higher + any measurable controlled substance; • Combination of two or more controlled substances that were not prescribed by a licensed physician or medical cannabis as defined in §26-61a; or • any prior conviction as defined in §41-6a-501(2)	<b>Impaired driving is unavailable after first offense.</b>
<b>Ignition Interlock<sup>8</sup></b> (§41-6a-518) (§41-6a-530)	<b>SHALL</b> order unless: • The court determines and states on the record that an ignition interlock system is not necessary for the safety of the community and in the best interest of justice. <b>SHALL</b> order: • Interlock if under 21 Interlock for an ARD <sup>9</sup> violation <b>OR</b> describe on the record why such order not appropriate	
<b>Driver License Suspension</b> (§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> shorten suspension periods for a convicted DUI defendant under the age of 21 if the defendant: completes at least six months of suspension, completes a screening, completes an assessment as appropriate, completes substance abuse treatment or educational series as appropriate, has not committed any traffic offense during suspension, has complied with probation, and provides an affidavit that the defendant has not unlawfully consumed alcohol.	

<sup>1</sup> The DUI Statutory Overview was formerly called the DUI Sentencing Matrix. 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> 2022's HB 29 created new offense for Negligent Operation of a Vehicle Resulting in Injury (76-5-102.1), which replaced a prior statutory scheme using injuries to enhance DUI offenses. Because this new statute directs the sentencing authority to refer to the sentencing guidelines and other factors, this offense is not reflected in the DUI Statutory Overview. Note, however, that 76-5-102.1(5)(b) prohibits a court from imposing a lesser sentence than what would be available under DUI sentencing statutes (41-6a-505), which are reflected in this overview.

<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.

<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.

<sup>10</sup> A jail sentence may be converted to electronic home confinement with stipulation of both parties and approval from the judge (§41-6a-505(12)(b))

<sup>11</sup> A court may order a jail sentence imposed as a condition of misdemeanor probation to be served in multiple two-day increment at weekly intervals if the court determines the defendant can serve the statutorily required jail term and maintain employment as described in (§41-6a-505(12))©

# UTAH DUI STATUTORY OVERVIEW

(Current as of May 2023)

Court-Ordered Sentencing	FELONY DUI	
<b>CLASSIFICATION</b> (§41-6a-503)	<b>THIRD DEGREE FELONY</b> <ul style="list-style-type: none"> <li>• if third or subsequent DUI offense within 10 years</li> <li>• if any prior felony DUI conviction or negligent operation of a vehicle resulting in injury 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> (§41-6a-505)	<b>SHALL</b> order: 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>MAY:</b> Convert jail time to electronic home confinement <sup>10</sup> or order two-day increments if requirements are met <sup>11</sup>	<b>SHALL</b> order 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>MAY:</b> Convert jail time to electronic home confinement <sup>10</sup> or order two-day increments if requirements are met <sup>11</sup>
<b>Fine, Surcharge, and Court Security Fee</b> (§41-6a-505) (§51-9-401)	<b>SHALL</b> order: \$1,500 minimum fine plus a \$1,350 surcharge plus a \$53 court security fee, UNLESS a 0-5 prison term is imposed	
<b>Screening, Assessment, Educational Series, and Treatment</b> (§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> UNLESS 0-5 prison term is imposed <b>MAY</b> order: 24-7 sobriety program <sup>6</sup>	
<b>Supervised Probation<sup>7</sup></b> (§41-6a-507)	<b>SHALL</b> order supervised probation if 0-5 prison term is not imposed	
<b>Ignition Interlock<sup>8</sup></b> (§41-6a-518) (§41-6a-530)	<b>SHALL</b> order unless: The court determines and states on the record that an ignition interlock system is not necessary for the safety of the community and in the best interest of justice.	
<b>Driver License Suspension</b> (§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> shorten suspension periods for a convicted DUI defendant under the age of 21 if the defendant: completes at least six months of suspension, completes a screening, completes an assessment as appropriate, completes substance abuse treatment or educational series as appropriate, has not committed any traffic offense during suspension, has complied with probation, and provides an affidavit that the defendant has not unlawfully consumed alcohol.	

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

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> (§41-6a-509)	<b>If 21 or older:</b> 120 days <b>If 19-20:</b> Longer of one year or until 21st birthday <b>If under 19:</b> Until 21st birthday	<b>If 21 or older:</b> 2 years <b>If 19-20:</b> Longer of 2 years or until 21st birthday <b>If under 19:</b> Until 21st birthday
<b>Driving with Controlled Substance/ Metabolite in Body Conviction</b> (§41-6a-517)	<b>If 21 or older:</b> 120 days <b>If 19-20:</b> Longer of one year or until 21st birthday <b>If under 19:</b> Until 21st birthday	<b>If 21 or older:</b> 2 years <b>If 19-20:</b> Longer of two years or until 21st birthday <b>If under 19:</b> Until 21st birthday
<b>Refusal of Chemical Test</b> (§41-6a-521)	<b>If 21 or older:</b> 18 months <b>If under 21:</b> Longer of 2 years or until 21st birthday	<b>If 21 or older:</b> 36 months <b>If under 21:</b> Longer of 36 months or until 21st birthday
<b>Per se Arrest</b> (§53-3-223) ≥ .05 BAC, impaired to degree unsafe to drive, operating with metabolite of drug in system	<b>If 21 or older:</b> 120 days <b>If under 21:</b> 6 months	<b>If 21 or older:</b> 2 years <b>If under 21:</b> Longer of 2 years or until 21st birthday
<b>Not A Drop</b> (§53-3-231) 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> (§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> (§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> (§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> (§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> (§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-520.1(1))
- **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-520.1(1))
- **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-520.1(1))
- **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.
- Note: A person under the age of 21 is an alcohol restricted driver

- **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-520.1(1)) 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-520.1(1))
- **Lifetime ARD** for any Felony DUI (§41-6a-502) or Automobile Homicide (§76-5-207)