

CHAPTER 2

DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRUGS, OR A COMBINATION OF BOTH OR WITH SPECIFIED OR UNSAFE BLOOD ALCOHOL CONCENTRATION

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2.1 GENERALLY

The statutes governing driving under the influence offenses are found in Utah Code Ann. §41-6a-500, *et. seq.* This section creates several separate offenses that are related to DUI; driving with a measurable amount of a controlled substance or its metabolite in the body, alcohol and interlock restricted driver violations, open container, and reckless driving. The statute provides for both *per se* DUI violations when a drivers BAC is at a certain level as well as for *impairment* DUI violations when a driver is impaired regardless of the amount of alcohol or other intoxicants in the body.

2.2 STATUTES

The following are the enumerated driving offenses related to DUI in Utah:

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

- (1) A person may not operate or be in actual physical control of a vehicle within 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 .08 grams or greater at the time of the test;

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

(c) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation or actual physical control; or

(d) (i) is 21 years of age or older;

(ii) has a passenger under 16 years of age in the vehicle at the time of operation or actual physical control;

(iii) has committed a violation of this Subsection (1)(d) within ten years of a prior conviction as defined in Subsection 41-6a-501(2); and

(iv) (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 .05 grams or greater at the time of the test; or

(B) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation or actual physical control.

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) A violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6a-510.

41-6a-517. Driving with any measurable controlled substance in the body

(2) In cases not amounting to a violation of Section 41-6a-502, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.

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.

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

(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.

41-6a-528. Reckless driving

(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.

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

(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).

2.3 METHODS OF PROOF

A defendant may be found guilty of DUI either by a showing that s/he has a sufficiently high alcohol content (.08) or that s/he is impaired to the point where s/he is incapable of safely operating a motor vehicle. It should be stressed that these are alternative methods of proving guilt and are not inclusive requirements. If a defendant is over .08, they should be found guilty regardless of their ability to drive. Conversely, even if a driver is below .08 yet are still impaired as a result of alcohol or other intoxicants, they should also be found guilty.

2.4 CONSTITUTIONALITY

The Utah Supreme Court has concluded that the prohibitions contained in the DUI statutes pass constitutional muster. In State vs. Brennan, 371 P2d 27 (Utah 1962), the court stated;

In connection with this appeal some questions are raised as to the validity of this statute under which defendant was charged. We do not see sufficient merit in them to warrant any extensive discussion. ***It is within the prerogative of the legislature to make it unlawful for one to drive a vehicle while under the influence of liquor***; and to provide a greater penalty if while doing so he injures another by recklessness or negligence . . .

2.5 DEFENSE NOT AVAILABLE IN DUI PROSECUTIONS

41-6a-504. Defense not available for driving under the influence violation.

The fact that a person charged with violating Section 41-6a-502 is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating Section 41-6a-502.

Note that this is only applicable to §502 prosecutions. Having a valid prescription is an affirmative defense to the crime of driving with a measurable amount of a controlled substance or its metabolite in the body pursuant to §517.

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