

**76-5-207 Automobile homicide.**

(1) As used in this section:

(a) "Drug" or "drugs" means:

- (i) a controlled substance as defined in Section 58-37-2;
- (ii) a drug as defined in Section 58-17b-102; or
- (iii) 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.

(b) "Motor vehicle" means any self-propelled vehicle and includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

(2)

(a) Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:

- (i) has sufficient alcohol in his 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;
- (ii) 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; or
- (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is subsequent to a conviction as defined in Subsection 41-6a-501(2).

(c) As used in this Subsection (2), "negligent" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

(3)

(a) Criminal homicide is automobile homicide, a second degree felony, if the person operates a motor vehicle in a criminally negligent manner causing the death of another and:

- (i) has sufficient alcohol in his 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;
- (ii) 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; or
- (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) As used in this Subsection (3), "criminally negligent" means criminal negligence as defined by Subsection 76-2-103(4).

(4) The standards for chemical breath analysis as provided by Section 41-6a-515 and the provisions for the admissibility of chemical test results as provided by Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.

(5) Calculations of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(1).

(6) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.

(7) Evidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by Rules of Evidence or the constitution.

(8) A person is guilty of a separate offense for each victim suffering bodily injury or serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a result of the person's violation of this section whether or not the injuries arise from the same episode of driving.

Amended by Chapter 214, 2009 General Session