

## Part 2 Criminal Homicide

### **76-5-201 Criminal homicide -- Designations of offenses -- Exceptions -- Application of consensual altercation defense.**

- (1)
  - (a) As used in this section:
    - (i) "Abortion" means the same as that term is defined in Section 76-7-301.
    - (ii) "Criminal homicide" means an act causing the death of another human being, including an unborn child at any stage of the unborn child's development.
  - (b) The terms defined in Section 76-1-101.5 apply to this section.
- (2) The following are criminal homicide:
  - (a) aggravated murder;
  - (b) murder;
  - (c) manslaughter;
  - (d) child abuse homicide;
  - (e) homicide by assault;
  - (f) negligent homicide; and
  - (g) negligently operating a vehicle resulting in death.
- (3) Notwithstanding Subsection (2), an actor is not guilty of criminal homicide if:
  - (a) the death of an unborn child is caused by an abortion;
  - (b) the sole reason for the death of an unborn child is that the actor:
    - (i) refused to consent to:
      - (A) medical treatment; or
      - (B) a cesarean section; or
    - (ii) failed to follow medical advice; or
  - (c) a woman causes the death of her own unborn child, and the death:
    - (i) is caused by a criminally negligent act or reckless act of the woman; and
    - (ii) is not caused by an intentional or knowing act of the woman.
- (4) The provisions governing a defense of a consensual altercation as described in Section 76-5-104 apply to this part.

Amended by Chapter 116, 2022 General Session

Amended by Chapter 116, 2022 General Session, (Coordination Clause)

Amended by Chapter 181, 2022 General Session, (Coordination Clause)

Amended by Chapter 181, 2022 General Session

### **76-5-202 Aggravated murder -- Penalties -- Affirmative defense and special mitigation -- Separate offense.**

- (1)
  - (a) As used in this section:
    - (i) "Correctional officer" means the same as that term is defined in Section 53-13-104.
    - (ii) "Emergency responder" means the same as that term is defined in Section 53-2b-102.
    - (iii) "Federal officer" means the same as that term is defined in Section 53-13-106.
    - (iv) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.
    - (v) "Peace officer" means:
      - (A) a correctional officer, federal officer, law enforcement officer, or special function officer; or

- (B) any other person who may exercise peace officer authority in accordance with Title 53, Chapter 13, Peace Officer Classifications.
  - (vi) "Special function officer" means the same as that term is defined in Section 53-13-105.
  - (vii) "Target a law enforcement officer" means an act:
    - (A) involving the unlawful use of force and violence against a law enforcement officer;
    - (B) that causes serious bodily injury or death; and
    - (C) that is in furtherance of political or social objectives in order to intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government.
  - (viii) "Weapon of mass destruction" means the same as that term is defined in Section 76-10-401.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2)
- (a) An actor commits aggravated murder if the actor intentionally or knowingly causes the death of another individual under any of the following circumstances:
    - (i) the actor committed homicide while confined in a jail or other correctional institution;
    - (ii)
      - (A) the actor committed homicide incident to one act, scheme, course of conduct, or criminal episode during which two or more individuals other than the actor were killed; or
      - (B) the actor, during commission of the homicide, attempted to kill one or more other individuals in addition to the deceased individual;
    - (iii) the actor knowingly created a great risk of death to another individual other than the deceased individual and the actor;
    - (iv) the actor committed homicide incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, aggravated child abuse as described in Subsection 76-5-109.2(3)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;
    - (v) the actor committed homicide incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as described in Subsection 76-9-704(2)(e);
    - (vi) the actor committed homicide for the purpose of avoiding or preventing an arrest of the actor or another individual by a peace officer acting under color of legal authority or for the purpose of effecting the actor's or another individual's escape from lawful custody;
    - (vii) the actor committed homicide for pecuniary gain;
    - (viii) the actor committed, engaged, or employed another person to commit the homicide subject to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;
    - (ix) the actor previously committed or was convicted of:
      - (A) aggravated murder under this section;
      - (B) attempted aggravated murder under this section;
      - (C) murder, under Section 76-5-203;
      - (D) attempted murder, under Section 76-5-203; or
      - (E) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (2)(a)(ix);
    - (x) the actor was previously convicted of:

- (A) aggravated assault, under Section 76-5-103;
- (B) mayhem, under Section 76-5-105;
- (C) kidnapping, under Section 76-5-301;
- (D) child kidnapping, under Section 76-5-301.1;
- (E) aggravated kidnapping, under Section 76-5-302;
- (F) rape, under Section 76-5-402;
- (G) rape of a child, under Section 76-5-402.1;
- (H) object rape, under Section 76-5-402.2;
- (I) object rape of a child, under Section 76-5-402.3;
- (J) forcible sodomy, under Section 76-5-403;
- (K) sodomy on a child, under Section 76-5-403.1;
- (L) aggravated sexual abuse of a child, under Section 76-5-404.3;
- (M) aggravated sexual assault, under Section 76-5-405;
- (N) aggravated arson, under Section 76-6-103;
- (O) aggravated burglary, under Section 76-6-203;
- (P) aggravated robbery, under Section 76-6-302;
- (Q) felony discharge of a firearm, under Section 76-10-508.1; or
- (R) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (2)(a)(x);
- (xi) the actor committed homicide for the purpose of:
  - (A) preventing a witness from testifying;
  - (B) preventing a person from providing evidence or participating in any legal proceedings or official investigation;
  - (C) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or
  - (D) disrupting or hindering any lawful governmental function or enforcement of laws;
- (xii) the deceased individual was a local, state, or federal public official, or a candidate for public office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy;
- (xiii) the deceased individual was on duty in a verified position or the homicide is based on, is caused by, or is related to the deceased individual's position, and the actor knew, or reasonably should have known, that the deceased individual holds or has held the position of:
  - (A) a peace officer;
  - (B) an executive officer, prosecuting officer, jailer, or prison official;
  - (C) a firefighter, search and rescue personnel, emergency medical personnel, ambulance personnel, or any other emergency responder;
  - (D) a judge or other court official, juror, probation officer, or parole officer; or
  - (E) a security officer contracted to secure, guard, or otherwise protect tangible personal property, real property, or the life and well-being of human or animal life in the area of the offense;
- (xiv) the actor committed homicide:
  - (A) by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered;
  - (B) by means of any weapon of mass destruction; or
  - (C) to target a law enforcement officer;

- (xv) the actor committed homicide during the act of unlawfully assuming control of an aircraft, train, or other public conveyance by use of threats or force with intent to:
  - (A) obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard;
  - (B) direct the route or movement of the public conveyance; or
  - (C) otherwise exert control over the public conveyance;
- (xvi) the actor committed homicide by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;
- (xvii) the deceased individual was held or otherwise detained as a shield, hostage, or for ransom;
- (xviii) the actor committed homicide in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the deceased individual before death;
- (xix) the actor dismembers, mutilates, or disfigures the deceased individual's body, whether before or after death, in a manner demonstrating the actor's depravity of mind; or
- (xx) the deceased individual, at the time of the death of the deceased individual:
  - (A) was younger than 14 years old; and
  - (B) was not an unborn child.
- (b) An actor commits aggravated murder if the actor, with reckless indifference to human life, causes the death of another individual incident to an act, scheme, course of conduct, or criminal episode during which the actor is a major participant in the commission or attempted commission of:
  - (i) aggravated child abuse, punishable as a felony of the second degree under Subsection 76-5-109.2(3)(a);
  - (ii) child kidnapping, under Section 76-5-301.1;
  - (iii) rape of a child, under Section 76-5-402.1;
  - (iv) object rape of a child, under Section 76-5-402.3;
  - (v) sodomy on a child, under Section 76-5-403.1; or
  - (vi) sexual abuse or aggravated sexual abuse of a child, under Section 76-5-404.1.
- (3)
  - (a) If a notice of intent to seek the death penalty has been filed, a violation of Subsection (2) is a capital felony.
  - (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.
  - (c)
    - (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty.
    - (ii) The notice shall be served on the defendant or defense counsel and filed with the court.
    - (iii) Notice of intent to seek the death penalty may be served and filed more than 60 days after the arraignment upon written stipulation of the parties or upon a finding by the court of good cause.
  - (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to noncapital first degree felony aggravated murder during the period in which the prosecutor may file a notice of intent to seek the death penalty under Subsection (3)(c)(i).
  - (e) If the defendant was younger than 18 years old at the time the offense was committed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

- (f) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section, are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as follows:
  - (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall enter a judgment of conviction for murder; or
  - (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the court shall enter a judgment of conviction for attempted murder.
- (4)
  - (a) It is an affirmative defense to a charge of aggravated murder or attempted aggravated murder that the actor caused the death of another or attempted to cause the death of another under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.
  - (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.
  - (c) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section, are proved beyond a reasonable doubt, and also finds the affirmative defense described in this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:
    - (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall enter a judgment of conviction for murder; or
    - (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the court shall enter a judgment of conviction for attempted murder.
- (5)
  - (a) Any aggravating circumstance described in Subsection (2) that constitutes a separate offense does not merge with the crime of aggravated murder.
  - (b) An actor who is convicted of aggravated murder, based on an aggravating circumstance described in Subsection (2) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Amended by Chapter 181, 2022 General Session

**76-5-203 Murder -- Penalties-- Affirmative defense and special mitigation -- Separate offenses.**

- (1)
  - (a) As used in this section, "predicate offense" means:
    - (i) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;
    - (ii) aggravated child abuse, under Subsection 76-5-109.2(3)(a), when the abused individual is younger than 18 years old;
    - (iii) kidnapping under Section 76-5-301;
    - (iv) child kidnapping under Section 76-5-301.1;
    - (v) aggravated kidnapping under Section 76-5-302;
    - (vi) rape under Section 76-5-402;
    - (vii) rape of a child under Section 76-5-402.1;
    - (viii) object rape under Section 76-5-402.2;

- (ix) object rape of a child under Section 76-5-402.3;
  - (x) forcible sodomy under Section 76-5-403;
  - (xi) sodomy upon a child under Section 76-5-403.1;
  - (xii) forcible sexual abuse under Section 76-5-404;
  - (xiii) sexual abuse of a child under Section 76-5-404.1;
  - (xiv) aggravated sexual abuse of a child under Section 76-5-404.3;
  - (xv) aggravated sexual assault under Section 76-5-405;
  - (xvi) arson under Section 76-6-102;
  - (xvii) aggravated arson under Section 76-6-103;
  - (xviii) burglary under Section 76-6-202;
  - (xix) aggravated burglary under Section 76-6-203;
  - (xx) robbery under Section 76-6-301;
  - (xxi) aggravated robbery under Section 76-6-302;
  - (xxii) escape or aggravated escape under Section 76-8-309; or
  - (xxiii) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a firearm or dangerous weapon.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits murder if:
- (a) the actor intentionally or knowingly causes the death of another individual;
  - (b) intending to cause serious bodily injury to another individual, the actor commits an act clearly dangerous to human life that causes the death of the other individual;
  - (c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly engages in conduct that creates a grave risk of death to another individual and thereby causes the death of the other individual;
  - (d)
    - (i) the actor is engaged in the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense, or is a party to the predicate offense;
    - (ii) an individual other than a party described in Section 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense; and
    - (iii) the actor acted with the intent required as an element of the predicate offense;
  - (e) the actor recklessly causes the death of a peace officer or military service member in uniform while in the commission or attempted commission of:
    - (i) an assault against a peace officer under Section 76-5-102.4;
    - (ii) interference with a peace officer while making a lawful arrest under Section 76-8-305 if the actor uses force against the peace officer; or
    - (iii) an assault against a military service member in uniform under Section 76-5-102.4; or
  - (f) the actor commits a homicide that would be aggravated murder, but the offense is reduced in accordance with Subsection 76-5-202(4).
- (3)
- (a)
    - (i) A violation of Subsection (2) is a first degree felony.
    - (ii) A defendant who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.
  - (b) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is established by a

preponderance of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as follows:

- (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a judgment of conviction for manslaughter; or
  - (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall, notwithstanding Subsection 76-4-102(1)(b) or 76-4-102(1)(c)(i), enter a judgment of conviction for attempted manslaughter.
- (4)
- (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another individual or attempted to cause the death of another individual under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.
  - (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.
  - (c) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted murder, as described in this section are proved beyond a reasonable doubt, and also finds the affirmative defense described in this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:
    - (i) if the trier of fact finds the defendant guilty of murder, the court shall enter a judgment of conviction for manslaughter; or
    - (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall enter a judgment of conviction for attempted manslaughter.
- (5)
- (a) Any predicate offense that constitutes a separate offense does not merge with the crime of murder.
  - (b) An actor who is convicted of murder, based on a predicate offense that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Amended by Chapter 181, 2022 General Session

#### **76-5-204 Death of other than intended victim no defense.**

In any prosecution for criminal homicide, evidence that the actor caused the death of a person other than the intended victim shall not constitute a defense for any purpose to criminal homicide.

Enacted by Chapter 196, 1973 General Session

#### **76-5-205 Manslaughter -- Penalties.**

- (1)
- (a) As used in this section:
    - (i)
      - (A) "Aid" means the act of providing the physical means.
      - (B) "Aid" does not include the withholding or withdrawal of life sustaining treatment procedures to the extent allowed under Title 75, Chapter 2a, Advance Health Care Directive Act, or any other laws of this state.
    - (ii) "Practitioner" means an individual currently licensed, registered, or otherwise authorized by law to administer, dispense, distribute, or prescribe medications or procedures in the course of professional practice.

- (iii) "Provides" means to administer, prescribe, distribute, or dispense.
- (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) Except as provided in Subsection (5), an actor commits manslaughter if the actor:
  - (a) recklessly causes the death of another individual;
  - (b) intentionally, and with knowledge that another individual intends to commit suicide or attempt to commit suicide, aids the individual to commit suicide; or
  - (c) commits a homicide which would be murder, but the offense is reduced in accordance with Subsection 76-5-203(4).
- (3) A violation of Subsection (2) is a felony of the second degree.
- (4)
  - (a) In addition to the penalty described under this section or any other section, a defendant who is convicted of violating this section shall have the defendant's driver license revoked under Section 53-3-220 if the death of another individual results from driving a motor vehicle.
  - (b) The court shall forward the report of the conviction resulting from driving a motor vehicle to the Driver License Division in accordance with Section 53-3-218.
- (5)
  - (a) A practitioner does not violate Subsection (2)(b) if the practitioner provides medication or a procedure to treat an individual's illness or relieve an individual's pain or discomfort, regardless of whether the medication or procedure may hasten or increase the risk of death to the individual to whom the practitioner provides the medication or procedure.
  - (b) Notwithstanding Subsection (5)(a), a practitioner violates Subsection (2)(b) if the practitioner intentionally and knowingly provides the medication or procedure to aid the individual to commit suicide or attempt to commit suicide.

Amended by Chapter 181, 2022 General Session

**76-5-205.5 Special mitigation for mental condition or provocation -- Burden of proof -- Charge reduction.**

- (1)
  - (a) As used in this section:
    - (i)
      - (A) "Extreme emotional distress" means an overwhelming reaction of anger, shock, or grief that:
        - (I) causes the defendant to be incapable of reflection and restraint; and
        - (II) would cause an objectively reasonable person to be incapable of reflection and restraint.
      - (B) "Extreme emotional distress" does not include:
        - (I) a condition resulting from a mental condition; or
        - (II) distress that is substantially caused by the defendant's own conduct.
    - (ii) "Mental condition" means the same as that term is defined in Section 76-2-305.
  - (b) The terms defined in Section 76-1-101.5 apply to this section.
- (2) Special mitigation exists when a defendant causes the death of another individual or attempts to cause the death of another individual:
  - (a)
    - (i) under circumstances that are not legally justified, but the defendant acts under a delusion attributable to a mental condition;
    - (ii) the nature of the delusion is such that, if the facts existed as the defendant believed them to be in the delusional state, those facts would provide a legal justification for the defendant's conduct; and



- (iii) the defendant's actions, in light of the delusion, are reasonable from the objective viewpoint of a reasonable person; or
- (b) except as provided in Subsection (4), under the influence of extreme emotional distress that is predominantly caused by the victim's highly provoking act immediately preceding the defendant's actions.
- (3) A defendant who is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense may not claim mitigation of the offense under Subsection (2)(a) on the basis of a mental condition if the alcohol or substance causes, triggers, or substantially contributes to the defendant's mental condition.
- (4) A defendant may not claim special mitigation under Subsection (2)(b) if:
  - (a) the time period after the victim's highly provoking act and before the defendant's actions was long enough for an objectively reasonable person to have recovered from the extreme emotional distress;
  - (b) the defendant responded to the victim's highly provoking act by inflicting serious or substantial bodily injury on the victim over a prolonged period, or by inflicting torture on the victim, regardless of whether the victim was conscious during the infliction of serious or substantial bodily injury or torture; or
  - (c) the victim's highly provoking act, described in Subsection (2)(b), is comprised of words alone.
- (5) If the trier of fact finds that the elements of aggravated murder, attempted aggravated murder, murder, or attempted murder are proven beyond a reasonable doubt, and also finds that the existence of special mitigation under this section is established by a preponderance of the evidence, the court shall enter a judgment of conviction in accordance with Subsection 76-5-202(3)(f)(i), 76-5-202(3)(f)(ii), 76-5-203(3)(b)(i), or 76-5-203(3)(b)(ii), respectively.
- (6) If the issue of special mitigation is submitted to the trier of fact, the trier of fact shall return a special verdict at the same time as the general verdict, indicating whether it finds special mitigation.
- (7)
  - (a) If a jury is the trier of fact, a unanimous vote of the jury is required to find special mitigation under this section.
  - (b) If the jury unanimously finds that the elements of an offense described in Subsection (5) are proven beyond a reasonable doubt, and finds special mitigation by a unanimous vote, the jury shall return a general verdict finding the defendant guilty of the charged crime and a special verdict indicating special mitigation.
  - (c) If the jury unanimously finds that the elements of an offense described in Subsection (5) are proven beyond a reasonable doubt but finds by a unanimous vote that special mitigation is not established, or if the jury is unable to unanimously agree that special mitigation is established, the jury shall convict the defendant of the greater offense for which the prosecution proves all the elements beyond a reasonable doubt.

Amended by Chapter 184, 2023 General Session

#### **76-5-206 Negligent homicide -- Penalties.**

- (1) Definitions of terms in Section 76-1-101.5 apply to this section.
- (2) An actor commits negligent homicide if the actor, acting with criminal negligence, causes the death of another individual.
- (3) A violation of Subsection (2) is a class A misdemeanor.
- (4)

- (a) In addition to the penalty provided under this section or any other section, a defendant who is convicted of violating this section shall have the defendant's driver license revoked under Section 53-3-220 if the death of another individual results from driving a motor vehicle.
- (b) The court shall forward the report of the conviction to the Driver License Division in accordance with Section 53-3-218.

Amended by Chapter 181, 2022 General Session

**76-5-207 Negligently operating a vehicle resulting in death -- Penalties -- Evidence.**

- (1)
  - (a) As used in this section:
    - (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.
    - (ii) "Criminally negligent" means the same as that term is described in Subsection 76-2-103(4).
    - (iii) "Drug" means:
      - (A) a controlled substance;
      - (B) a drug as defined in Section 58-37-2; or
      - (C) a substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of an individual to safely operate a vehicle.
    - (iv) "Negligent" or "negligence" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.
    - (v) "Vehicle" means the same as that term is defined in Section 41-6a-501.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits negligently operating a vehicle resulting in death if the actor:
  - (a)
    - (i) operates a vehicle in a negligent or criminally negligent manner causing the death of another individual;
  - (ii)
    - (A) has sufficient alcohol in the actor's body such that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 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 actor incapable of safely operating a vehicle; or
    - (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation; or
  - (b)
    - (i) operates a vehicle in a criminally negligent manner causing death to another; and
    - (ii) has in the actor's body any measurable amount of a controlled substance.
- (3) Except as provided in Subsection (4), an actor who violates Subsection (2) is guilty of:
  - (a) a second degree felony; and
  - (b) a separate offense for each victim suffering death as a result of the actor's violation of this section, regardless of whether the deaths arise from the same episode of driving.
- (4) An actor is not guilty of a violation of negligently operating a vehicle resulting in death under Subsection (2)(b) if:
  - (a) the controlled substance was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the practitioner's professional practice, or as otherwise authorized by Title 58, Occupations and Professions;
  - (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or
  - (c) the actor possessed, in the actor's body, a controlled substance listed in Section 58-37-4.2 if:

- (i) the actor is the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and
  - (ii) the substance was administered to the actor by the medical researcher.
- (5)
- (a) A judge imposing a sentence under this section may consider:
    - (i) the sentencing guidelines developed in accordance with Section 63M-7-404;
    - (ii) the defendant's history;
    - (iii) the facts of the case;
    - (iv) aggravating and mitigating factors; or
    - (v) any other relevant fact.
  - (b) The judge may not impose a lesser sentence than would be required for a conviction based on the defendant's history under Section 41-6a-505.
  - (c) 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.
  - (d) A calculation of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(3).
  - (e) Except as provided in Subsection (4), the fact that an actor charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.
  - (f) Evidence of a defendant's blood or breath alcohol content or drug content is admissible except when prohibited by the Utah Rules of Evidence, the United States Constitution, or the Utah Constitution.
  - (g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense described in this section may not be held in abeyance.

Amended by Chapter 415, 2023 General Session

**76-5-207.5 Automobile homicide involving a handheld wireless communication device while driving.**

- (1)
- (a) As used in this section:
    - (i) "Criminally negligent" means the same as that term is described in Subsection 76-2-103(4).
    - (ii) "Motor vehicle" means any self-propelled vehicle, including an automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.
    - (iii) "Negligent" means the failure to exercise the degree of care that a reasonable and prudent person exercises under similar circumstances.
    - (iv) "Wireless communication device" means the same as that term is defined in Section 41-6a-1716.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits automobile homicide if the actor:
- (a) operates a moving motor vehicle in a negligent manner;
  - (b) while using a wireless communication device in violation of Section 41-6a-1716; and
  - (c) causes the death of another individual.
- (3)
- (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third degree felony.
  - (b) A violation of Subsection (2) is a second degree felony if the actor operated the moving motor vehicle in a criminally negligent manner.

Amended by Chapter 111, 2023 General Session

**76-5-208 Child abuse homicide -- Penalties.**

- (1)
  - (a) As used in this section, "child abuse" means an offense described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, and 76-5-114.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) Unless a violation amounts to aggravated murder as described in Section 76-5-202, an actor commits child abuse homicide if:
  - (a)
    - (i) the actor causes the death of another individual who is younger than 18 years old; and
    - (ii) the individual's death results from child abuse; and
  - (b)
    - (i) the child abuse is done recklessly under Subsection 76-5-109.2(3)(b);
    - (ii) the child abuse is done with criminal negligence under Subsection 76-5-109.2(3)(c); or
    - (iii) under circumstances not amounting to the type of child abuse homicide described in Subsection (2)(b)(i), the child abuse is done intentionally, knowingly, recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or (c).
- (3)
  - (a) A violation of Subsection (2) under the circumstances described in Subsection (2)(b)(i) is a first degree felony.
  - (b) A violation of Subsection (2) under the circumstances described in Subsection (2)(b)(ii) or (iii) is a second degree felony.

Amended by Chapter 111, 2023 General Session

**76-5-209 Homicide by assault -- Penalty.**

- (1) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits homicide by assault if, under circumstances not amounting to aggravated murder, murder, or manslaughter:
  - (a) the actor causes the death of another individual; and
  - (b) the actor causes the other individual's death while intentionally or knowingly attempting, with unlawful force or violence, to do bodily injury to the other individual.
- (3) Homicide by assault is a third degree felony.

Amended by Chapter 181, 2022 General Session