

Effective 5/4/2022

Superseded 5/3/2023

76-5-102.1 Negligently operating a vehicle resulting in injury.

- (1) As used in this section:
 - (a) "Controlled substance" means the same as that term is defined in Section 58-37-2.
 - (b) "Drug" means the same as that term is defined in Section 76-5-207.
 - (c) "Negligent" or "negligence" means the same as that term is defined in Section 76-5-207.
 - (d) "Vehicle" means the same as that term is defined in Section 41-6a-501.
- (2) An actor commits negligently operating a vehicle resulting in injury if the actor:
 - (a)
 - (i) operates a vehicle in a negligent manner causing bodily injury to another; and
 - (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, a drug, or the combined influence of alcohol and a 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 bodily injury to another; and
 - (ii) has in the actor's body any measurable amount of a controlled substance.
- (3) Except as provided in Subsection (4), a violation of Subsection (2) is:
 - (a)
 - (i) a class A misdemeanor; or
 - (ii) a third degree felony if the bodily injury is serious bodily injury; and
 - (b) a separate offense for each victim suffering bodily injury as a result of the actor's violation of this section, regardless of whether the injuries arise from the same episode of driving.
- (4) An actor is not guilty of negligently operating a vehicle resulting in injury 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 under Section 41-6a-515 and the provisions for the admissibility of chemical test results under 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(2).
- (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 if 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.