

AUTOMOBILE HOMICIDE AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Carlene M. Walker

This act modifies the Criminal Code by stating that one of the elements of the offense of automobile homicide may be that the operator has a measurable amount of Schedule I or II controlled substances in the body. This act also provides an affirmative defense if the controlled substance was involuntarily ingested or was being taken pursuant to a prescription.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

§ 41-6-44.6, AS LAST AMENDED BY CHAPTER 8, LAWS OF UTAH 2002 §

76-5-207, as last amended by Chapter 106, Laws of Utah 2002

Be it enacted by the Legislature of the state of Utah:

§ Section 1. Section 41-6-44.6 is amended to read:

41-6-44.6. Definitions -- Driving with any measurable controlled substance in the body --

Penalties -- Arrest without warrant.

(1) As used in this section:

(a) "Controlled substance" means any substance scheduled under Section 58-37-4.

(b) "Practitioner" has the same meaning as provided in Section 58-37-2.

(c) "Prescribe" has the same meaning as provided in Section 58-37-2.

(d) "Prescription" has the same meaning as provided in Section 58-37-2.

(2) In cases not amounting to a violation of Section 41-6-44, 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.

(3) It is an affirmative defense to prosecution under this section that the controlled substance was involuntarily [ingested] INTRODUCED INTO THE BODY by the accused or prescribed by a practitioner for use by the accused.

(4) A person convicted of a violation of Subsection (2) is guilty of a class B misdemeanor.

(5) A peace officer may, without a warrant, arrest a person for a violation of this section when the officer has probable cause to believe the violation has occurred, although not in the §



13r § officer's presence, and if the officer has probable cause to believe that the violation was committed
13s by the person.

13t (6) The Driver License Division shall:

13u (a) suspend, for 90 days, the driver license of a person convicted under Subsection (2);

13v (b) revoke, for one year, the driver license of a person convicted of a second or subsequent
13w offense under Subsection (2) or if the person has a prior conviction as defined under Subsection
13x 41-6-44(1), if the violation is committed within a period of ten years after the date of the prior violation;
13y and

13z (c) subtract from any suspension or revocation period the number of days for which a license
13aa was previously suspended under Section 53-3-223 or 53-3-231, if the previous suspension was based
13ab on the same occurrence upon which the record of conviction is based.

13ac (7) If a person fails to complete all court ordered screening and assessment, educational
13ad series, and substance abuse treatment, or fails to pay all fines and fees, including fees for restitution
13ae and treatment costs, the court shall notify the Driver License Division of a failure to comply. Upon
13af receiving the notification, the division shall suspend the person's driving privilege in accordance with
13ag Subsections 53-3-221(2) and (3).

13ah (8) The court shall order supervised probation in accordance with Subsection 41-6-44(14) for a
13ai person convicted under Subsection (2). §

14 § [~~Section 1~~] **SECTION 2** § . Section 76-5-207 is amended to read:

15 **76-5-207. Automobile homicide.**

16 (1) As used in this section, "motor vehicle" means any self-propelled vehicle and
17 includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

18 [~~(1)~~] (2) (a) Criminal homicide is automobile homicide, a third degree felony, if the
19 person operates a motor vehicle in a negligent manner causing the death of another and:

20 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the
21 person has a blood or breath alcohol concentration of .08 grams or greater at the time of the
22 test;

23 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
24 and any drug to a degree that renders the person incapable of safely operating a vehicle; [~~or~~]

25 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
26 operation[~~;~~]; or

27 (iv) has in his body any measurable amount of a Schedule I or Schedule II controlled

28 substance as defined in Section 58-37-4.

29 (b) A conviction for a violation of this Subsection (2) is a second degree felony if it is
30 subsequent to a conviction as defined in Subsection 41-6-44(1)(a).

31 ~~[(b)]~~ (c) ~~[For the purpose of]~~ As used in this Subsection (2), "negligent" means simple
32 negligence, the failure to exercise that degree of care that reasonable and prudent persons
33 exercise under like or similar circumstances.

34 ~~[(2)]~~ (3) (a) Criminal homicide is automobile homicide, a second degree felony, if the
35 person operates a motor vehicle in a criminally negligent manner causing the death of another
36 and:

37 (i) has sufficient alcohol in his body that a subsequent chemical test shows that the
38 person has a blood or breath alcohol concentration of .08 grams or greater at the time of the
39 test;

40 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
41 and any drug to a degree that renders the person incapable of safely operating a vehicle; ~~[(or)]~~

42 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
43 operation[-]; or

44 (iv) has in his body any measurable amount of a Schedule I or Schedule II controlled
45 substance as defined in Section 58-37-4.

46 (b) ~~[For the purpose of]~~ As used in this [section] Subsection (3), "criminally negligent"
47 means criminal negligence as defined by Subsection 76-2-103(4).

48 ~~[(3)]~~ (4) The standards for chemical breath analysis as provided by Section 41-6-44.3
49 and the provisions for the admissibility of chemical test results as provided by Section
50 41-6-44.5 apply to determination and proof of blood alcohol content under this section.

51 ~~[(4)]~~ (5) Calculations of blood or breath alcohol concentration under this section shall
52 be made in accordance with Subsection 41-6-44(2).

53 (6) (a) It is an affirmative defense to prosecution under Subsections (2)(a)(iv) and
54 (3)(a)(iv) that the controlled substance was involuntarily § [ingested] INTRODUCED INTO THE BODY § by
54a the defendant or
55 prescribed by a practitioner, as defined by Section 58-17a-102, for use by the defendant.

56 ~~[(5)]~~ (b) The fact that a person charged with violating any other provision of this
57 section is or has been legally entitled to use alcohol or a drug is not a defense [to any charge of
58 violating this section].



59 [(6)] (7) Evidence of a defendant's blood or breath alcohol content or drug content is
60 admissible except when prohibited by Rules of Evidence or the constitution.

61 [~~(7) For purposes of this section, "motor vehicle" means any self-propelled vehicle and~~
62 ~~includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.]~~

Legislative Review Note
as of 9-26-02 1:06 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-11-02 11:52 AM

The Transportation Interim Committee recommended this bill.

State Impact

This bill may extend the time some persons spend in prison. There is no fiscal impact in FY 2004 or FY 2005. There may be an increase of prison costs in subsequent years depending on the number of inmates sentenced under the provisions of this bill.

Individual and Business Impact

Those convicted under the provisions of this bill may spend more time in prison. This may reduce their earning ability and consequently reduce their income over the time they spend in prison.

Office of the Legislative Fiscal Analyst