

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:

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 **76-5-207** is amended to read:

76-5-207. Automobile homicide.

(1) As used in this section, "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~~[-];~~ or

(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 by 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