

1 **CRIMINAL PENALTY AMENDMENTS**

2 2009 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Daniel R. Liljenquist**

5 House Sponsor: Curtis Oda

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to certain criminal penalty provisions.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ provides that the definition of a conviction, for purposes of certain driving under
13 the influence provisions, only includes convictions arising from a separate episode
14 of driving;

15 ▶ clarifies that a person is guilty of a separate offense for each victim suffering bodily
16 injury, serious bodily injury, or death as a result of the person's violation of the
17 driving under the influence or automobile homicide provisions whether or not the
18 injuries arise from the same episode of driving;

19 ▶ clarifies that a person is guilty of a separate offense for each victim suffering
20 serious bodily injury or death as a result of the person's violation of the prohibition
21 on driving a vehicle in a negligent manner and having a measurable amount of a
22 controlled substance in the person's body whether or not the injuries arise from the
23 same episode of driving; and

24 ▶ makes technical changes.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **41-6a-501**, as last amended by Laws of Utah 2008, Chapter 226

32 **41-6a-503**, as last amended by Laws of Utah 2007, Chapter 261

33 **58-37-8**, as last amended by Laws of Utah 2008, Chapter 295

34 **76-5-207**, as last amended by Laws of Utah 2008, Chapter 226

35

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

37 Section 1. Section **41-6a-501** is amended to read:

38 **41-6a-501. Definitions.**

39 (1) As used in this part:

40 (a) "Assessment" means an in-depth clinical interview with a licensed mental health
41 therapist:

42 (i) used to determine if a person is in need of:

43 (A) substance abuse treatment that is obtained at a substance abuse program;

44 (B) an educational series; or

45 (C) a combination of Subsections (1)(a)(i)(A) and (B); and

46 (ii) that is approved by the Board of Substance Abuse and Mental Health in
47 accordance with Section 62A-15-105.

48 (b) "Drug" or "drugs" means:

49 (i) a controlled substance as defined in Section 58-37-2;

50 (ii) a drug as defined in Section 58-17b-102; or

51 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the
52 human body, can impair the ability of a person to safely operate a motor vehicle.

53 (c) "Educational series" means an educational series obtained at a substance abuse
54 program that is approved by the Board of Substance Abuse and Mental Health in accordance
55 with Section 62A-15-105.

56 (d) "Negligence" means simple negligence, the failure to exercise that degree of care
57 that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

- 58 (e) "Screening" means a preliminary appraisal of a person:
- 59 (i) used to determine if the person is in need of:
- 60 (A) an assessment; or
- 61 (B) an educational series; and
- 62 (ii) that is approved by the Board of Substance Abuse and Mental Health in
- 63 accordance with Section 62A-15-105.
- 64 (f) "Serious bodily injury" means bodily injury that creates or causes:
- 65 (i) serious permanent disfigurement;
- 66 (ii) protracted loss or impairment of the function of any bodily member or organ; or
- 67 (iii) a substantial risk of death.
- 68 (g) "Substance abuse treatment" means treatment obtained at a substance abuse
- 69 program that is approved by the Board of Substance Abuse and Mental Health in accordance
- 70 with Section 62A-15-105.
- 71 (h) "Substance abuse treatment program" means a state licensed substance abuse
- 72 program.
- 73 (i) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in
- 74 Section 41-6a-102; and
- 75 (ii) "Vehicle" or "motor vehicle" includes:
- 76 (A) an off-highway vehicle as defined under Section 41-22-2; and
- 77 (B) a motorboat as defined in Section 73-18-2.
- 78 (2) As used in Section 41-6a-503:
- 79 (a) "Conviction" means any conviction arising from a separate episode of driving for a
- 80 violation of:
- 81 (i) driving under the influence under Section 41-6a-502;
- 82 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a
- 83 combination of both-related reckless driving under:
- 84 (I) Section 41-6a-512; and
- 85 (II) Section 41-6a-528; or

86 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
87 41-6a-502.5;

88 (iii) driving with any measurable controlled substance that is taken illegally in the
89 body under Section 41-6a-517;

90 (iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination
91 of both-related reckless driving, or impaired driving under Section 41-6a-502.5 adopted in
92 compliance with Section 41-6a-510;

93 (v) automobile homicide under Section 76-5-207;

94 (vi) Subsection 58-37-8(2)(g);

95 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of
96 conviction is reduced under Section 76-3-402; or

97 (viii) statutes or ordinances previously in effect in this state or in effect in any other
98 state, the United States, or any district, possession, or territory of the United States which
99 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
100 both-related reckless driving if committed in this state, including punishments administered
101 under 10 U.S.C. Sec. 815.

102 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)
103 through (viii) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,
104 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been
105 subsequently reduced or dismissed in accordance with the plea in abeyance agreement, for
106 purposes of:

107 (i) enhancement of penalties under:

108 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and

109 (B) automobile homicide under Section 76-5-207; and

110 (ii) expungement under Section 77-18-12.

111 Section 2. Section **41-6a-503** is amended to read:

112 **41-6a-503. Penalties for driving under the influence violations.**

113 (1) A person [~~convicted~~] who violates for the first or second time [~~of a violation of~~]

114 Section 41-6a-502 is guilty of a:

115 (a) class B misdemeanor; or

116 (b) class A misdemeanor if the person:

117 (i) has also inflicted bodily injury upon another as a proximate result of having
118 operated the vehicle in a negligent manner;

119 (ii) had a passenger under 16 years of age in the vehicle at the time of the offense; or

120 (iii) was 21 years of age or older and had a passenger under 18 years of age in the
121 vehicle at the time of the offense.

122 (2) A person [~~convicted of a violation of~~] who violates Section 41-6a-502 is guilty of a
123 third degree felony if:

124 (a) the person has also inflicted serious bodily injury upon another as a proximate
125 result of having operated the vehicle in a negligent manner;

126 (b) the person has two or more prior convictions as defined in Subsection
127 41-6a-501(2), each of which is within ten years of:

128 (i) the current conviction under Section 41-6a-502; or

129 (ii) the commission of the offense upon which the current conviction is based; or

130 (c) the conviction under Section 41-6a-502 is at any time after a conviction of:

131 (i) automobile homicide under Section 76-5-207 that is committed after July 1, 2001;

132 (ii) a felony violation of Section 41-6a-502 or a statute previously in effect in this state
133 that would constitute a violation of Section 41-6a-502 that is committed after July 1, 2001; or

134 (iii) any conviction described in Subsection (2)(c)(i) or (ii) which judgment of
135 conviction is reduced under Section 76-3-402.

136 (3) A person is guilty of a separate offense for each victim suffering bodily injury or
137 serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a
138 result of the person's violation of Section 76-5-207 whether or not the injuries arise from the
139 same episode of driving.

140 Section 3. Section **58-37-8** is amended to read:

141 **58-37-8. Prohibited acts -- Penalties.**

142 (1) Prohibited acts A -- Penalties:
143 (a) Except as authorized by this chapter, it is unlawful for any person to knowingly
144 and intentionally:
145 (i) produce, manufacture, or dispense, or to possess with intent to produce,
146 manufacture, or dispense, a controlled or counterfeit substance;
147 (ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or
148 arrange to distribute a controlled or counterfeit substance;
149 (iii) possess a controlled or counterfeit substance with intent to distribute; or
150 (iv) engage in a continuing criminal enterprise where:
151 (A) the person participates, directs, or engages in conduct which results in any
152 violation of any provision of Title 58, Chapters 37, 37a, 37b, 37c, or 37d that is a felony; and
153 (B) the violation is a part of a continuing series of two or more violations of Title 58,
154 Chapters 37, 37a, 37b, 37c, or 37d on separate occasions that are undertaken in concert with
155 five or more persons with respect to whom the person occupies a position of organizer,
156 supervisor, or any other position of management.
157 (b) Any person convicted of violating Subsection (1)(a) with respect to:
158 (i) a substance classified in Schedule I or II, a controlled substance analog, or
159 gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony and
160 upon a second or subsequent conviction is guilty of a first degree felony;
161 (ii) a substance classified in Schedule III or IV, or marijuana, is guilty of a third degree
162 felony, and upon a second or subsequent conviction is guilty of a second degree felony; or
163 (iii) a substance classified in Schedule V is guilty of a class A misdemeanor and upon
164 a second or subsequent conviction is guilty of a third degree felony.
165 (c) Any person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii)
166 may be sentenced to imprisonment for an indeterminate term as provided by law, but if the
167 trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on
168 his person or in his immediate possession during the commission or in furtherance of the
169 offense, the court shall additionally sentence the person convicted for a term of one year to run

170 consecutively and not concurrently; and the court may additionally sentence the person
171 convicted for an indeterminate term not to exceed five years to run consecutively and not
172 concurrently.

173 (d) Any person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree
174 felony punishable by imprisonment for an indeterminate term of not less than seven years and
175 which may be for life. Imposition or execution of the sentence may not be suspended, and the
176 person is not eligible for probation.

177 (2) Prohibited acts B -- Penalties:

178 (a) It is unlawful:

179 (i) for any person knowingly and intentionally to possess or use a controlled substance
180 analog or a controlled substance, unless it was obtained under a valid prescription or order,
181 directly from a practitioner while acting in the course of his professional practice, or as
182 otherwise authorized by this chapter;

183 (ii) for any owner, tenant, licensee, or person in control of any building, room,
184 tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to
185 be occupied by persons unlawfully possessing, using, or distributing controlled substances in
186 any of those locations; or

187 (iii) for any person knowingly and intentionally to possess an altered or forged
188 prescription or written order for a controlled substance.

189 (b) Any person convicted of violating Subsection (2)(a)(i) with respect to:

190 (i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony;

191 (ii) a substance classified in Schedule I or II, marijuana, if the amount is more than 16
192 ounces, but less than 100 pounds, or a controlled substance analog, is guilty of a third degree
193 felony; or

194 (iii) marijuana, if the marijuana is not in the form of an extracted resin from any part
195 of the plant, and the amount is more than one ounce but less than 16 ounces, is guilty of a
196 class A misdemeanor.

197 (c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a

198 conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater
199 penalty than provided in this Subsection (2).

200 (d) Any person who violates Subsection (2)(a)(i) with respect to all other controlled
201 substances not included in Subsection (2)(b)(i), (ii), or (iii), including less than one ounce of
202 marijuana, is guilty of a class B misdemeanor. Upon a second conviction the person is guilty of
203 of a class A misdemeanor, and upon a third or subsequent conviction the person is guilty of a
204 third degree felony.

205 (e) Any person convicted of violating Subsection (2)(a)(i) while inside the exterior
206 boundaries of property occupied by any correctional facility as defined in Section 64-13-1 or
207 any public jail or other place of confinement shall be sentenced to a penalty one degree greater
208 than provided in Subsection (2)(b), and if the conviction is with respect to controlled
209 substances as listed in:

210 (i) Subsection (2)(b), the person may be sentenced to imprisonment for an
211 indeterminate term as provided by law, and:

212 (A) the court shall additionally sentence the person convicted to a term of one year to
213 run consecutively and not concurrently; and

214 (B) the court may additionally sentence the person convicted for an indeterminate term
215 not to exceed five years to run consecutively and not concurrently; and

216 (ii) Subsection (2)(d), the person may be sentenced to imprisonment for an
217 indeterminate term as provided by law, and the court shall additionally sentence the person
218 convicted to a term of six months to run consecutively and not concurrently.

219 (f) Any person convicted of violating Subsection (2)(a)(ii) or (2)(a)(iii) is:

220 (i) on a first conviction, guilty of a class B misdemeanor;

221 (ii) on a second conviction, guilty of a class A misdemeanor; and

222 (iii) on a third or subsequent conviction, guilty of a third degree felony.

223 (g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not
224 amounting to a violation of Section 76-5-207:

225 (i) violates Subsection (2)(a)(i) by knowingly and intentionally having in his body any

226 measurable amount of a controlled substance; and

227 (ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner,
228 causing serious bodily injury as defined in Section 76-1-601 or the death of another.

229 (h) A person who violates Subsection (2)(g) by having in his body:

230 (i) a controlled substance classified under Schedule I, other than those described in
231 Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a
232 second degree felony;

233 (ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection
234 58-37-4(2)(a)(iii)(S) or (AA) is guilty of a third degree felony; or

235 (iii) any controlled substance classified under Schedules III, IV, or V is guilty of a
236 class A misdemeanor.

237 (i) A person is guilty of a separate offense for each victim suffering serious bodily
238 injury or death as a result of the person's negligent driving in violation of Subsection
239 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.

240 (3) Prohibited acts C -- Penalties:

241 (a) It is unlawful for any person knowingly and intentionally:

242 (i) to use in the course of the manufacture or distribution of a controlled substance a
243 license number which is fictitious, revoked, suspended, or issued to another person or, for the
244 purpose of obtaining a controlled substance, to assume the title of, or represent himself to be, a
245 manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized
246 person;

247 (ii) to acquire or obtain possession of, to procure or attempt to procure the
248 administration of, to obtain a prescription for, to prescribe or dispense to any person known to
249 be attempting to acquire or obtain possession of, or to procure the administration of any
250 controlled substance by misrepresentation or failure by the person to disclose his receiving any
251 controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a
252 prescription or written order for a controlled substance, or the use of a false name or address;

253 (iii) to make any false or forged prescription or written order for a controlled

254 substance, or to utter the same, or to alter any prescription or written order issued or written
255 under the terms of this chapter; or

256 (iv) to make, distribute, or possess any punch, die, plate, stone, or other thing designed
257 to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint,
258 or device of another or any likeness of any of the foregoing upon any drug or container or
259 labeling so as to render any drug a counterfeit controlled substance.

260 (b) Any person convicted of violating Subsection (3)(a) is guilty of a third degree
261 felony.

262 (4) Prohibited acts D -- Penalties:

263 (a) Notwithstanding other provisions of this section, a person not authorized under this
264 chapter who commits any act declared to be unlawful under this section, Title 58, Chapter 37a,
265 Utah Drug Paraphernalia Act, or under Title 58, Chapter 37b, Imitation Controlled Substances
266 Act, is upon conviction subject to the penalties and classifications under this Subsection (4) if
267 the trier of fact finds the act is committed:

268 (i) in a public or private elementary or secondary school or on the grounds of any of
269 those schools;

270 (ii) in a public or private vocational school or postsecondary institution or on the
271 grounds of any of those schools or institutions;

272 (iii) in those portions of any building, park, stadium, or other structure or grounds
273 which are, at the time of the act, being used for an activity sponsored by or through a school or
274 institution under Subsections (4)(a)(i) and (ii);

275 (iv) in or on the grounds of a preschool or child-care facility;

276 (v) in a public park, amusement park, arcade, or recreation center;

277 (vi) in or on the grounds of a house of worship as defined in Section 76-10-501;

278 (vii) in a shopping mall, sports facility, stadium, arena, theater, movie house,
279 playhouse, or parking lot or structure adjacent thereto;

280 (viii) in or on the grounds of a library;

281 (ix) within any area that is within 1,000 feet of any structure, facility, or grounds

282 included in Subsections (4)(a)(i), (ii), (iv), (vi), and (vii);

283 (x) in the presence of a person younger than 18 years of age, regardless of where the
284 act occurs; or

285 (xi) for the purpose of facilitating, arranging, or causing the transport, delivery, or
286 distribution of a substance in violation of this section to an inmate or on the grounds of any
287 correctional facility as defined in Section 76-8-311.3.

288 (b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony
289 and shall be imprisoned for a term of not less than five years if the penalty that would
290 otherwise have been established but for this Subsection (4) would have been a first degree
291 felony.

292 (ii) Imposition or execution of the sentence may not be suspended, and the person is
293 not eligible for probation.

294 (c) If the classification that would otherwise have been established would have been
295 less than a first degree felony but for this Subsection (4), a person convicted under this
296 Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that
297 offense. This Subsection (4)(c) does not apply to a violation of Subsection (2)(g).

298 (d) (i) If the violation is of Subsection (4)(a)(xi):

299 (A) the person may be sentenced to imprisonment for an indeterminate term as
300 provided by law, and the court shall additionally sentence the person convicted for a term of
301 one year to run consecutively and not concurrently; and

302 (B) the court may additionally sentence the person convicted for an indeterminate term
303 not to exceed five years to run consecutively and not concurrently; and

304 (ii) the penalties under this Subsection (4)(d) apply also to any person who, acting
305 with the mental state required for the commission of an offense, directly or indirectly solicits,
306 requests, commands, coerces, encourages, or intentionally aids another person to commit a
307 violation of Subsection (4)(a)(xi).

308 (e) It is not a defense to a prosecution under this Subsection (4) that the actor
309 mistakenly believed the individual to be 18 years of age or older at the time of the offense or

310 was unaware of the individual's true age; nor that the actor mistakenly believed that the
311 location where the act occurred was not as described in Subsection (4)(a) or was unaware that
312 the location where the act occurred was as described in Subsection (4)(a).

313 (5) Any violation of this chapter for which no penalty is specified is a class B
314 misdemeanor.

315 (6) For purposes of penalty enhancement under Subsections (1)(b) and (2)(c), a plea of
316 guilty or no contest to a violation of this section which is held in abeyance under Title 77,
317 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been
318 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

319 (7) A person may be charged and sentenced for a violation of this section,
320 notwithstanding a charge and sentence for a violation of any other section of this chapter.

321 (8) (a) Any penalty imposed for violation of this section is in addition to, and not in
322 lieu of, any civil or administrative penalty or sanction authorized by law.

323 (b) Where violation of this chapter violates a federal law or the law of another state,
324 conviction or acquittal under federal law or the law of another state for the same act is a bar to
325 prosecution in this state.

326 (9) In any prosecution for a violation of this chapter, evidence or proof which shows a
327 person or persons produced, manufactured, possessed, distributed, or dispensed a controlled
328 substance or substances, is prima facie evidence that the person or persons did so with
329 knowledge of the character of the substance or substances.

330 (10) This section does not prohibit a veterinarian, in good faith and in the course of
331 his professional practice only and not for humans, from prescribing, dispensing, or
332 administering controlled substances or from causing the substances to be administered by an
333 assistant or orderly under his direction and supervision.

334 (11) Civil or criminal liability may not be imposed under this section on:

335 (a) any person registered under this chapter who manufactures, distributes, or
336 possesses an imitation controlled substance for use as a placebo or investigational new drug by
337 a registered practitioner in the ordinary course of professional practice or research; or

338 (b) any law enforcement officer acting in the course and legitimate scope of his
339 employment.

340 (12) (a) Civil or criminal liability may not be imposed under this section on any
341 Indian, as defined in Subsection 58-37-2(1)(v), who uses, possesses, or transports peyote for
342 bona fide traditional ceremonial purposes in connection with the practice of a traditional
343 Indian religion as defined in Subsection 58-37-2(1)(w).

344 (b) In a prosecution alleging violation of this section regarding peyote as defined in
345 Subsection 58-37-4(2)(a)(iii)(V), it is an affirmative defense that the peyote was used,
346 possessed, or transported by an Indian for bona fide traditional ceremonial purposes in
347 connection with the practice of a traditional Indian religion.

348 (c) (i) The defendant shall provide written notice of intent to claim an affirmative
349 defense under this Subsection (12) as soon as practicable, but not later than ten days prior to
350 trial.

351 (ii) The notice shall include the specific claims of the affirmative defense.

352 (iii) The court may waive the notice requirement in the interest of justice for good
353 cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

354 (d) The defendant shall establish the affirmative defense under this Subsection (12) by
355 a preponderance of the evidence. If the defense is established, it is a complete defense to the
356 charges.

357 (13) If any provision of this chapter, or the application of any provision to any person
358 or circumstances, is held invalid, the remainder of this chapter shall be given effect without
359 the invalid provision or application.

360 Section 4. Section **76-5-207** is amended to read:

361 **76-5-207. Automobile homicide.**

362 (1) As used in this section:

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

364 (i) a controlled substance as defined in Section 58-37-2;

365 (ii) a drug as defined in Section 58-17b-102; or

366 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the
367 human body, can impair the ability of a person to safely operate a motor vehicle.

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

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

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

375 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
376 and any drug to a degree that renders the person incapable of safely operating a vehicle; or

377 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
378 operation.

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

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

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

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

390 (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol
391 and any drug to a degree that renders the person incapable of safely operating a vehicle; or

392 (iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of
393 operation.

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

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

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

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

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

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