

956 homicide if the actor:

957 (a) (i) operates a vehicle in a negligent or criminally negligent manner causing the
958 death of another individual; ~~it~~ **and** ~~it~~

959 (ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test
960 shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the
961 time of the test;

962 (B) is under the influence of alcohol, any drug, or the combined influence of alcohol
963 and any drug to a degree that renders the actor incapable of safely operating a vehicle; or

964 (C) has a blood or breath alcohol concentration of .05 grams or greater at the time of
965 operation; or

966 (b) (i) operates a vehicle in a criminally negligent manner causing death to another; and

967 (ii) has in the actor's body any measurable amount of a controlled substance.

968 (3) Except as provided in Subsection (4), an actor who violates Subsection (2) is guilty
969 of:

970 (a) a second degree felony, punishable by a term of imprisonment of not less than five
971 years nor more than 15 years; and

972 (b) a separate offense for each victim suffering death as a result of the actor's violation
973 of this section, regardless of whether the deaths arise from the same episode of driving.

974 (4) An actor is not guilty of a violation of [~~negligently operating a vehicle resulting in~~
975 ~~death~~] automobile homicide under Subsection (2)(b) if:

976 (a) the controlled substance was obtained under a valid prescription or order, directly
977 from a practitioner while acting in the course of the practitioner's professional practice, or as
978 otherwise authorized by Title 58, Occupations and Professions;

979 (b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or

980 (c) the actor possessed, in the actor's body, a controlled substance listed in Section
981 58-37-4.2 if:

982 (i) the actor is the subject of medical research conducted by a holder of a valid license
983 to possess controlled substances under Section 58-37-6; and

984 (ii) the substance was administered to the actor by the medical researcher.

985 (5) (a) A judge imposing a sentence under this section may consider:

986 (i) the sentencing guidelines developed in accordance with Section 63M-7-404;