

Information Regarding SB25-281
Office of the State Public Defender
April 2025

Current law has numerous crimes that address driving resulting in death. Each crime has its own culpable mental state as defined under Colorado Law.

Current Colorado Crimes Involving Driving and Death

- 1) **Careless Resulting in Death** – TM1 – 10 days to one year in county jail
Culpable Mental State: driving in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances

- 2) **Criminally Negligent Homicide** (traffic accident can be filed as general crime per case law) F5 – 1 year to 3 years - 2 years parole (presumptive)
Culpable Mental State: A person acts with criminal negligence when they fail to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists, through a gross deviation from the standard of care that a reasonable person would exercise.

- 3) **Vehicular Homicide**
 - a. **Reckless** – F4 – 2 years to 6 years DOC – 3 years parole (presumptive)
Culpable Mental State: consciously disregarding a substantial and unjustifiable risk that a result will occur or that a circumstance exists
 - b. **Under influence** – F3 – 4 years to 12 years DOC – 3 years parole (presumptive)
Culpable Mental State: strict liability
 - c. **Impaired** – F4- 2 years to 6 years DOC – 3 years parole (presumptive)
Culpable Mental State: strict liability

- 4) **Extreme Indifference Homicide** – F1 – life without parole
Culpable Mental State: under circumstances evidencing an attitude of universal malice manifesting extreme indifference to the value of human life generally

5) **Additional General Intent often charged: 2nd Degree Murder – F2 – 8 years to 24 years – 5 years parole (presumptive)**

Culpable Mental State: knowingly: they are aware that their conduct is of a certain nature or that certain circumstances exist.

Law Regarding Express Consent and Tests for Impaired Driving

Current law in Colorado requires consent to impaired driving testing by law enforcement of blood, breath, saliva or urine (selected by the driver with various exceptions) through the Colorado Express Consent Law when the law enforcement officer has probable cause to suspect that a person is driving under the influence or impaired by alcohol or drugs.

The provisions of SB25-281 creates new law regarding the requirement to test blood, breath, saliva or urine. There are problems with the language of the bill:

- 1) The bill requires testing of the substances without any probable cause for impaired driving.
- 2) The bill allows for admission of a refusal in a trial of careless driving when impairment is not an element of the offense
- 3) The bill ignores the time frames and the conditions necessary in both statutory law and case law for the implementation of express consent
- 4) The bill fails to provide the procedural protections that apply with express consent
- 5) The bill allows the law enforcement officer to choose to administer multiple tests without limit.

**Because of the concerns, Office of State Public Defender
opposes SB25-281 as introduced.**