

1 **MURDER AND MANSLAUGHTER AMENDMENTS**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David L. Gladwell**

5 AN ACT RELATING TO CRIMINAL LAW; ESTABLISHING SPECIAL MITIGATION THAT
6 REDUCES THE CHARGES FOR HOMICIDE OFFENSES, BASED ON SPECIFIED
7 CIRCUMSTANCES; AMENDING THE OFFENSE OF MANSLAUGHTER TO INCLUDE
8 SPECIAL MITIGATION; PROVIDING STANDARD OF PROOF; AND PROVIDING
9 PROCEDURE.

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

11 AMENDS:

12 **76-5-203**, as last amended by Chapter 123, Laws of Utah 1996

13 **76-5-205**, as last amended by Chapter 177, Laws of Utah 1985

14 ENACTS:

15 **76-5-205.7**, Utah Code Annotated 1953

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

17 Section 1. Section **76-5-203** is amended to read:

18 **76-5-203. Murder.**

19 (1) Criminal homicide constitutes murder if the actor:

20 (a) intentionally or knowingly causes the death of another;

21 (b) intending to cause serious bodily injury to another commits an act clearly dangerous
22 to human life that causes the death of another;

23 (c) acting under circumstances evidencing a depraved indifference to human life engages
24 in conduct which creates a grave risk of death to another and thereby causes the death of another;

25 (d) while in the commission, attempted commission, or immediate flight from the
26 commission or attempted commission of aggravated robbery, robbery, rape, object rape, forcible
27 sodomy, or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary,

28 aggravated kidnapping, kidnapping, child kidnapping, rape of a child, object rape of a child,
29 sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of
30 a child, or child abuse, as defined in Subsection 76-5-109 (2)(a), when the victim is younger than
31 14 years of age, causes the death of another person other than a party as defined in Section
32 76-2-202; [or]

33 (e) recklessly causes the death of a peace officer while in the commission or attempted
34 commission of:

35 (i) an assault against a peace officer as defined in Section 76-5-102.4; [or]

36 (ii) interference with a peace officer while making a lawful arrest as defined in Section
37 76-8-305 if the actor uses force against a peace officer[.]; or

38 (f) commits aggravated murder, but special mitigation is established under Section
39 76-5-205.7.

40 (2) Murder is a first degree felony.

41 Section 2. Section **76-5-205** is amended to read:

42 **76-5-205. Manslaughter.**

43 (1) Criminal homicide constitutes manslaughter if the actor:

44 (a) recklessly causes the death of another; or

45 ~~[(b) causes the death of another under the influence of extreme emotional disturbance for~~
46 ~~which there is a reasonable explanation or excuse; or]~~

47 ~~[(c) causes the death of another under circumstances where the actor reasonably believes~~
48 ~~the circumstances provide a legal justification or excuse for his conduct although the conduct is~~
49 ~~not legally justifiable or excusable under the existing circumstances.]~~

50 ~~[(2) Under Subsection (1) (b), emotional disturbance does not include a condition resulting~~
51 ~~from mental illness as defined in Section 76-2-305.]~~

52 ~~[(3) The reasonableness of an explanation or excuse under Subsection (1) (b), or the~~
53 ~~reasonable belief of the actor under Subsection (1) (c), shall be determined from the viewpoint of~~
54 ~~a reasonable person under the then existing circumstances.]~~

55 (b) commits murder, but special mitigation is established under Section 76-5-205.7.

56 ~~[(4)]~~ (2) Manslaughter is a felony of the second degree.

57 Section 3. Section **76-5-205.7** is enacted to read:

58 **76-5-205.7. Special mitigation reducing the level of criminal homicide offense --**

59 **Standard of proof -- Application to reduce offense.**

60 (1) (a) Special mitigation exists when the defendant causes the death of another under the
61 influence of extreme emotional distress for which there is a reasonable explanation or excuse.

62 (b) The reasonableness of an explanation or excuse under Subsection (1)(a) is determined
63 from the objective viewpoint of a reasonable person under the circumstances existing at the time
64 of the offense.

65 (c) Emotional distress under Subsection (1)(a) does not include:

66 (i) a condition resulting from mental illness as defined in Section 76-2-305; or

67 (ii) distress that is substantially caused by the defendant's own conduct.

68 (2) (a) Special mitigation exists when the defendant causes the death of another and the
69 defendant reasonably believes the existing circumstances at the time of the offense provide a legal
70 justification or excuse for his conduct, although the conduct is not legally justifiable or excusable
71 under the existing circumstances.

72 (b) The reasonable belief of the defendant under Subsection (2)(a) is determined from the
73 objective viewpoint of a reasonable person under the circumstances existing at the time of the
74 offense.

75 (3) (a) If the issue of special mitigation is submitted to the trier of fact, it shall return a
76 special verdict indicating whether the existence of special mitigation has been found.

77 (b) The trier of fact shall return the special verdict at the same time as the general verdict.

78 (4) (a) If the trier of fact finds the elements of an offense as listed in Subsection (4)(b) are
79 proven beyond a reasonable doubt, and also that the existence of special mitigation under this
80 section is established by a preponderance of the evidence, it shall return a verdict on the reduced
81 charge as provided in Subsection (4)(b).

82 (b) If under Subsection (4)(a) the offense is:

83 (i) aggravated murder, the defendant shall instead be found guilty of murder;

84 (ii) attempted aggravated murder, the defendant shall instead be found guilty of attempted
85 murder;

86 (iii) murder, the defendant shall instead be found guilty of manslaughter; or

87 (iv) attempted murder, the defendant shall instead be found guilty of attempted
88 manslaughter.

89 (5) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish the

90 existence of the special mitigation.

91 (b) If the jury does find special mitigation by a unanimous vote, it shall return a verdict
92 on the reduced charge as provided in Subsection (4).

93 (c) If the jury finds by a unanimous vote that special mitigation has not been established,
94 it shall convict the defendant of the greater offense for which the prosecution has established all
95 the elements beyond a reasonable doubt.

96 (d) If the jury is unable to unanimously agree whether or not special mitigation has been
97 established, the result is a hung jury.

98 (6) Special mitigation under this section does not in any case reduce the level of an offense
99 by more than one degree from that offense, the elements of which the evidence has established
100 beyond a reasonable doubt.

Legislative Review Note

as of 12-23-98 11:09 AM

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

Office of Legislative Research and General Counsel