

CHILD ABUSE HOMICIDE

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Gordon E. Snow

AN ACT RELATING TO CRIMINAL LAW; AMENDING PROVISIONS REGARDING THE VICTIM'S AGE IN MURDER OFFENSES INVOLVING CHILD ABUSE.

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

AMENDS:

76-5-109, as last amended by Chapter 67, Laws of Utah 1999

76-5-202, as last amended by Chapter 90, Laws of Utah 1999

76-5-203, as last amended by Chapters 2 and 90, Laws of Utah 1999

76-5-208, as last amended by Chapter 303, Laws of Utah 1997

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

Section 1. Section **76-5-109** is amended to read:

76-5-109. Child abuse.

(1) As used in this section:

(a) "Child" means a human being who is [~~17~~] under 18 years of age [~~or less~~].

(b) "Child abuse" means any offense described in Subsection (2) or (3), or in Section 76-5-109.1.

(c) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:

(i) a bruise or other contusion of the skin;

(ii) a minor laceration or abrasion;

(iii) failure to thrive or malnutrition; or

(iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(d).

(d) "Serious physical injury" means any physical injury or set of injuries which seriously impairs the child's health, or which involves physical torture or causes serious emotional harm to the child, or which involves a substantial risk of death to the child, including:

- (i) fracture of any bone or bones;
 - (ii) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;
 - (iii) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;
 - (iv) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
 - (v) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;
 - (vi) any damage to internal organs of the body;
 - (vii) any conduct toward a child which results in severe emotional harm, severe developmental delay or retardation, or severe impairment of the child's ability to function;
 - (viii) any injury which creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;
 - (ix) any conduct which causes a child to cease breathing, even if resuscitation is successful following the conduct; or
 - (x) any conduct which results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.
- (2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:
- (a) if done intentionally or knowingly, the offense is a felony of the second degree;
 - (b) if done recklessly, the offense is a felony of the third degree; or
 - (c) if done with criminal negligence, the offense is a class A misdemeanor.
- (3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:
- (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
 - (b) if done recklessly, the offense is a class B misdemeanor; or

(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be deemed to have committed an offense under this section.

Section 2. Section **76-5-202** is amended to read:

76-5-202. Aggravated murder.

(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

(a) the homicide was committed by a person who is confined in a jail or other correctional institution;

(b) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which two or more persons were killed, or during which the actor attempted to kill one or more persons in addition to the victim who was killed;

(c) the actor knowingly created a great risk of death to a person other than the victim and the actor;

(d) the homicide was committed while the actor was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit, aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child abuse [~~of a child under the age of 14 years;~~] as [~~otherwise~~] defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnaping, kidnaping, or child kidnaping;

(e) the homicide was committed for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant's or another's escape from lawful custody;

(f) the homicide was committed for pecuniary or other personal gain;

(g) the defendant committed, or engaged or employed another person to commit the

homicide pursuant to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;

(h) the actor was previously convicted of aggravated murder, murder, or of a felony involving the use or threat of violence to a person. For the purpose of this subsection an offense committed in another jurisdiction, which if committed in Utah would be punishable as aggravated murder or murder, is considered aggravated murder or murder;

(i) the homicide was committed for the purpose of:

(i) preventing a witness from testifying;

(ii) preventing a person from providing evidence or participating in any legal proceedings or official investigation;

(iii) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or

(iv) disrupting or hindering any lawful governmental function or enforcement of laws;

(j) the victim is or has been a local, state, or federal public official, or a candidate for public office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy;

(k) the victim is or has been a peace officer, law enforcement officer, executive officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position;

(l) the homicide was committed by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered;

(m) the homicide was committed during the act of unlawfully assuming control of any aircraft, train, or other public conveyance by use of threats or force with intent to obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard, or to direct the route or movement of the public conveyance or otherwise exert

control over the public conveyance;

(n) the homicide was committed by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

(o) the victim was a person held or otherwise detained as a shield, hostage, or for ransom;

(p) the actor was under a sentence of life imprisonment or a sentence of death at the time of the commission of the homicide; or

(q) the homicide was committed in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the victim before death.

(2) Aggravated murder is a capital offense.

(3) (a) It is an affirmative defense to a charge of aggravated murder or attempted aggravated murder that the defendant caused the death of another or attempted to cause the death of another:

(i) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse; or

(ii) under a reasonable belief that the circumstances provided a legal justification or excuse for his conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) Under Subsection (3)(a)(i), emotional distress does not include:

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

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

(c) The reasonableness of an explanation or excuse under Subsection (3)(a)(i) or the reasonable belief of the actor under Subsection (3)(a)(ii) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(d) This affirmative defense reduces charges only as follows:

(i) aggravated murder to murder; and

(ii) attempted aggravated murder to attempted murder.

Section 3. Section **76-5-203** is amended to read:

76-5-203. Murder.

- (1) Criminal homicide constitutes murder if the actor:
 - (a) intentionally or knowingly causes the death of another;
 - (b) intending to cause serious bodily injury to another commits an act clearly dangerous to human life that causes the death of another;
 - (c) acting under circumstances evidencing a depraved indifference to human life engages in conduct which creates a grave risk of death to another and thereby causes the death of another;
 - (d) while in the commission, attempted commission, or immediate flight from the commission or attempted commission of aggravated robbery, robbery, rape, object rape, forcible sodomy, or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, kidnapping, child kidnapping, rape of a child, object rape of a child, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, or child abuse, as defined in Subsection 76-5-109 (2)(a), [~~when the victim is younger than 14 years of age,~~] causes the death of another person other than a party as defined in Section 76-2-202;
 - (e) recklessly causes the death of a peace officer while in the commission or attempted commission of:
 - (i) an assault against a peace officer as defined in Section 76-5-102.4; or
 - (ii) interference with a peace officer while making a lawful arrest as defined in Section 76-8-305 if the actor uses force against a peace officer;
 - (f) commits a homicide which would be aggravated murder, but the offense is reduced pursuant to Subsection 76-5-202(3); or
 - (g) commits aggravated murder, but special mitigation is established under Section 76-5-205.5.
- (2) Murder is a first degree felony.
- (3) (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another or attempted to cause the death of another:
 - (i) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse; or
 - (ii) under a reasonable belief that the circumstances provided a legal justification or excuse

for his conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) Under Subsection (3)(a)(i) emotional distress does not include:

- (i) a condition resulting from mental illness as defined in Section 76-2-305; or
- (ii) distress that is substantially caused by the defendant's own conduct.

(c) The reasonableness of an explanation or excuse under Subsection (3)(a)(i) or the reasonable belief of the actor under Subsection (3)(a)(ii) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(d) This affirmative defense reduces charges only as follows:

- (i) murder to manslaughter; and
- (ii) attempted murder to attempted manslaughter.

Section 4. Section **76-5-208** is amended to read:

76-5-208. Child abuse homicide.

(1) Criminal homicide constitutes child abuse homicide if the actor causes the death of a person under [~~17~~] 18 years of age and the death results from child abuse, as defined in Subsection 76-5-109(1):

- (a) if done recklessly as provided in Subsection 76-5-109(2)(b);
 - (b) if done with criminal negligence as provided in Subsection 76-5-109(2)(c); or
 - (c) if done with the mental culpability as provided in Subsection 76-5-109(3)(a), (b), or (c).
- (2) Child abuse homicide as described in Subsection (1)(a) is a second degree felony.
- (3) Child abuse homicide as described in Subsections (1)(b) and (c) is a third degree felony.