

1 **FELONY MURDER AMENDMENTS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: John E. Swallow**

5 AN ACT RELATING TO THE CRIMINAL CODE; AMENDING THE FELONY MURDER  
6 STATUTE TO INCLUDE CLANDESTINE LAB OFFENSES AND ESCAPE AS PREDICATE  
7 CRIMES IN ESTABLISHING FELONY MURDER RESPONSIBILITY.

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

9 AMENDS:

10 **76-5-203**, as last amended by Chapters 2 and 90, Laws of Utah 1999

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

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

13 **76-5-203. Murder.**

14 (1) As used in this section, "predicate offense" means:

15 (a) violation of Section 58-37d-4 or 58-37d-5, Clandestine Drug Lab Act;

16 (b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18 years  
17 of age;

18 (c) kidnapping under Section 76-5-301;

19 (d) child kidnapping under Section 76-5-301.1;

20 (e) aggravated kidnapping under Section 76-5-302;

21 (f) rape of a child under Section 76-5-402.1;

22 (g) object rape of a child under Section 76-5-402.3;

23 (h) sodomy upon a child under Section 76-5-403.1;

24 (i) forcible sexual abuse under Section 76-5-404;

25 (j) sexual abuse of a child or aggravated sexual abuse of a child under Section 76-5-404.1;

26 (k) rape under Section 76-5-402;

27 (l) object rape under Section 76-5-402.2;

- 28           (m) forcible sodomy under Section 76-5-403;  
29           (n) aggravated sexual assault under Section 76-5-405;  
30           (o) arson under Section 76-6-102;  
31           (p) aggravated arson under Section 76-6-103;  
32           (q) burglary under Section 76-6-202;  
33           (r) aggravated burglary under Section 76-6-203;  
34           (s) robbery under Section 76-6-301;  
35           (t) aggravated robbery under Section 76-6-302; or  
36           (u) escape or aggravated escape under Section 76-8-309.  
37           [(1)] (2) Criminal homicide constitutes murder if [the actor]:  
38           (a) the actor intentionally or knowingly causes the death of another;  
39           (b) intending to cause serious bodily injury to another, the actor commits an act clearly  
40 dangerous to human life that causes the death of another;  
41           (c) acting under circumstances evidencing a depraved indifference to human life, the actor  
42 engages in conduct which creates a grave risk of death to another and thereby causes the death of  
43 another;  
44           (d) [~~while~~] (i) the actor is engaged in the commission, attempted commission, or  
45 immediate flight from the commission or attempted commission of [~~aggravated robbery, robbery,~~  
46 ~~rape, object rape, forcible sodomy, or aggravated sexual assault, aggravated arson, arson,~~  
47 ~~aggravated burglary, burglary, aggravated kidnapping, kidnapping, child kidnapping, rape of a~~  
48 ~~child, object rape of a child, sodomy upon a child, forcible sexual abuse, sexual abuse of a child,~~  
49 ~~aggravated sexual abuse of a child, or child abuse, as defined in Subsection 76-5-109 (2)(a), when~~  
50 ~~the victim is younger than 14 years of age, causes the death of another person other than a party~~  
51 ~~as defined in Section 76-2-202;]~~ any predicate offense, or is a party to the predicate offense; and  
52           (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of the  
53 commission, attempted commission, or immediate flight from the commission or attempted  
54 commission of any predicate offense;  
55           (e) the actor recklessly causes the death of a peace officer while in the commission or  
56 attempted commission of:  
57           (i) an assault against a peace officer [~~as defined in~~] under Section 76-5-102.4; or  
58           (ii) interference with a peace officer while making a lawful arrest [~~as defined in~~] under

59 Section 76-8-305 if the actor uses force against a peace officer;  
60 (f) commits a homicide which would be aggravated murder, but the offense is reduced  
61 pursuant to Subsection 76-5-202(3); or  
62 (g) the actor commits aggravated murder, but special mitigation is established under  
63 Section 76-5-205.5.  
64 [(2)] (3) Murder is a first degree felony.  
65 [(3)] (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the  
66 defendant caused the death of another or attempted to cause the death of another:  
67 (i) under the influence of extreme emotional distress for which there is a reasonable  
68 explanation or excuse; or  
69 (ii) under a reasonable belief that the circumstances provided a legal justification or excuse  
70 for his conduct although the conduct was not legally justifiable or excusable under the existing  
71 circumstances.  
72 (b) Under Subsection [(3)] (4)(a)(i) emotional distress does not include:  
73 (i) a condition resulting from mental illness as defined in Section 76-2-305; or  
74 (ii) distress that is substantially caused by the defendant's own conduct.  
75 (c) The reasonableness of an explanation or excuse under Subsection [(3)] (4)(a)(i) or the  
76 reasonable belief of the actor under Subsection [(3)] (4)(a)(ii) shall be determined from the  
77 viewpoint of a reasonable person under the then existing circumstances.  
78 (d) This affirmative defense reduces charges only as follows:  
79 (i) murder to manslaughter; and  
80 (ii) attempted murder to attempted manslaughter.

**Legislative Review Note**  
**as of 1-25-00 1:54 PM**

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

**Office of Legislative Research and General Counsel**