

1 **SENTENCING FOR FIRST DEGREE FELONY**

2 **MURDER**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lorie D. Fowlke**

6 Senate Sponsor: David L. Thomas

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Criminal Code regarding predicate offenses referred to in
11 defining first degree murder, provides that the minimum prison term for first degree
12 murder is 15 years, and establishes a defendant's "position of trust" as an aggravating
13 factor in sentencing murder offenses.

14 **Highlighted Provisions:**

15 This bill:

16 ▶ adds the offense of felony discharge of a weapon or firearm from a vehicle to the
17 list of predicate offenses, the commission of which in the course of committing a
18 homicide is an element of first degree felony murder;

19 ▶ amends the sentence for first degree murder to increase the minimum term from five
20 years to 15 years; and

21 ▶ adds as an aggravating factor, when determining imprisonment for specified
22 homicide offenses, that the defendant held a position of trust in relation to the
23 victim.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-5-203**, as last amended by Chapter 146, Laws of Utah 2003

31 ENACTS:

32 **76-3-406.5**, Utah Code Annotated 1953



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

35 Section 1. Section **76-3-406.5** is enacted to read:

36 **76-3-406.5. Aggravating factors in imprisonment for certain criminal homicide**
37 **cases.**

38 (1) As used in this section:

39 (a) "Cohabitant" has the same definition as in Section 30-6-1.

40 (b) "Position of trust" includes the position of a spouse, parent, or cohabitant.

41 (2) It is an aggravating factor that the person occupied a position of trust in relation to
42 the victim.

43 (3) The Board of Pardons and Parole shall consider the aggravating factor in
44 Subsection (2) in determining the length of imprisonment for a person convicted of:

45 (a) aggravated murder under Section 76-5-202;

46 (b) murder under Section 76-5-203; or

47 (c) manslaughter under Section 76-5-205.

48 (4) The sentencing court shall consider the aggravating factor in Subsection (2) in
49 sentencing a person convicted of manslaughter under Section 76-5-205.

50 Section 2. Section **76-5-203** is amended to read:

51 **76-5-203. Murder.**

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

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

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

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

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

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

- 59 (f) rape of a child under Section 76-5-402.1;
- 60 (g) object rape of a child under Section 76-5-402.3;
- 61 (h) sodomy upon a child under Section 76-5-403.1;
- 62 (i) forcible sexual abuse under Section 76-5-404;
- 63 (j) sexual abuse of a child or aggravated sexual abuse of a child under Section
64 76-5-404.1;
- 65 (k) rape under Section 76-5-402;
- 66 (l) object rape under Section 76-5-402.2;
- 67 (m) forcible sodomy under Section 76-5-403;
- 68 (n) aggravated sexual assault under Section 76-5-405;
- 69 (o) arson under Section 76-6-102;
- 70 (p) aggravated arson under Section 76-6-103;
- 71 (q) burglary under Section 76-6-202;
- 72 (r) aggravated burglary under Section 76-6-203;
- 73 (s) robbery under Section 76-6-301;
- 74 (t) aggravated robbery under Section 76-6-302; [or]
- 75 (u) escape or aggravated escape under Section 76-8-309[-]; or
- 76 (v) a felony violation of Subsection 76-10-508(2) regarding discharge of a firearm or
77 dangerous weapon.
- 78 (2) Criminal homicide constitutes murder if:
- 79 (a) the actor intentionally or knowingly causes the death of another;
- 80 (b) intending to cause serious bodily injury to another, the actor commits an act clearly
81 dangerous to human life that causes the death of another;
- 82 (c) acting under circumstances evidencing a depraved indifference to human life, the
83 actor engages in conduct which creates a grave risk of death to another and thereby causes the
84 death of another;
- 85 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
86 flight from the commission or attempted commission of any predicate offense, or is a party to
87 the predicate offense;
- 88 (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of
89 the commission, attempted commission, or immediate flight from the commission or attempted

90 commission of any predicate offense; and

91 (iii) the actor acted with the intent required as an element of the predicate offense;

92 (e) the actor recklessly causes the death of a peace officer while in the commission or
93 attempted commission of:

94 (i) an assault against a peace officer under Section 76-5-102.4; or

95 (ii) interference with a peace officer while making a lawful arrest under Section
96 76-8-305 if the actor uses force against a peace officer;

97 (f) commits a homicide which would be aggravated murder, but the offense is reduced
98 pursuant to Subsection 76-5-202(3); or

99 (g) the actor commits aggravated murder, but special mitigation is established under
100 Section 76-5-205.5.

101 (3) (a) Murder is a first degree felony.

102 (b) A person who is convicted of murder shall be sentenced to imprisonment for an
103 indeterminate term of not less than 15 years and which may be for life.

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

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

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

111 (b) Under Subsection (4)(a)(i) emotional distress does not include:

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

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

114 (c) The reasonableness of an explanation or excuse under Subsection (4)(a)(i) or the
115 reasonable belief of the actor under Subsection (4)(a)(ii) shall be determined from the
116 viewpoint of a reasonable person under the then existing circumstances.

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

118 (i) murder to manslaughter; and

119 (ii) attempted murder to attempted manslaughter.

Legislative Review Note

as of 11-21-05 7:01 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel