

**CAPITAL OFFENSES AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: D. Chris Buttars

Cosponsor: Carl Wimmer

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code regarding the elements of aggravated murder as related to the homicide of a child.

**Highlighted Provisions:**

This bill:

- ▶ provides that the commission or attempt to commit specified offenses, including sexual offenses, against a child as a part of the commission of the homicide constitutes aggravated murder, if committed with reckless indifference to human life;
- ▶ modifies an element of aggravated murder regarding acting for pecuniary gain; and
- ▶ modifies an element of murder to specify "knowing" as the level of intent when the defendant acts with depraved indifference.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5-202**, as last amended by Chapter 191, Laws of Utah 2006

**76-5-203**, as last amended by Chapter 348, Laws of Utah 2006

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

31 Section 1. Section **76-5-202** is amended to read:

32 **76-5-202. Aggravated murder.**

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

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

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

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

42 (d) the homicide was committed incident to an act, scheme, course of conduct, or  
43 criminal episode during which the actor committed or attempted to commit aggravated robbery,  
44 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon  
45 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child  
46 abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson,  
47 arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child  
48 kidnapping;

49 (e) the homicide was committed incident to one act, scheme, course of conduct, or  
50 criminal episode during which the actor committed the crime of abuse or desecration of a dead  
51 human body as defined in Subsection 76-9-704(2)(e);

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

55 (g) the homicide was committed for pecuniary [~~or other personal~~] gain;

56 (h) the defendant committed, or engaged or employed another person to commit the  
57 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration

58 for commission of the homicide;

59 (i) the actor previously committed or was convicted of:

60 (i) aggravated murder, Section 76-5-202;

61 (ii) attempted aggravated murder, Section 76-5-202;

62 (iii) murder, Section 76-5-203;

63 (iv) attempted murder, Section 76-5-203; or

64 (v) an offense committed in another jurisdiction which if committed in this state would

65 be a violation of a crime listed in this Subsection (1)(i);

66 (j) the actor was previously convicted of:

67 (i) aggravated assault, Subsection 76-5-103(2);

68 (ii) mayhem, Section 76-5-105;

69 (iii) kidnapping, Section 76-5-301;

70 (iv) child kidnapping, Section 76-5-301.1;

71 (v) aggravated kidnapping, Section 76-5-302;

72 (vi) rape, Section 76-5-402;

73 (vii) rape of a child, Section 76-5-402.1;

74 (viii) object rape, Section 76-5-402.2;

75 (ix) object rape of a child, Section 76-5-402.3;

76 (x) forcible sodomy, Section 76-5-403;

77 (xi) sodomy on a child, Section 76-5-403.1;

78 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;

79 (xiii) aggravated sexual assault, Section 76-5-405;

80 (xiv) aggravated arson, Section 76-6-103;

81 (xv) aggravated burglary, Section 76-6-203;

82 (xvi) aggravated robbery, Section 76-6-302; or

83 (xvii) an offense committed in another jurisdiction which if committed in this state

84 would be a violation of a crime listed in this Subsection (1)(j);

85 (k) the homicide was committed for the purpose of:

- 86 (i) preventing a witness from testifying;
- 87 (ii) preventing a person from providing evidence or participating in any legal
- 88 proceedings or official investigation;
- 89 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 90 any legal proceedings or official investigation; or
- 91 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 92 (l) the victim is or has been a local, state, or federal public official, or a candidate for
- 93 public office, and the homicide is based on, is caused by, or is related to that official position,
- 94 act, capacity, or candidacy;
- 95 (m) the victim is or has been a peace officer, law enforcement officer, executive
- 96 officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror,
- 97 probation officer, or parole officer, and the victim is either on duty or the homicide is based on,
- 98 is caused by, or is related to that official position, and the actor knew, or reasonably should
- 99 have known, that the victim holds or has held that official position;
- 100 (n) the homicide was committed:
- 101 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
- 102 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
- 103 structure, or was mailed or delivered; or
- 104 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;
- 105 (o) the homicide was committed during the act of unlawfully assuming control of any
- 106 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any
- 107 valuable consideration for the release of the public conveyance or any passenger, crew
- 108 member, or any other person aboard, or to direct the route or movement of the public
- 109 conveyance or otherwise exert control over the public conveyance;
- 110 (p) the homicide was committed by means of the administration of a poison or of any
- 111 lethal substance or of any substance administered in a lethal amount, dosage, or quantity;
- 112 (q) the victim was a person held or otherwise detained as a shield, hostage, or for
- 113 ransom;

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

117 (s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or  
118 after death, in a manner demonstrating the actor's depravity of mind.

119 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless  
120 indifference to human life, causes the death of another incident to an act, scheme, course of  
121 conduct, or criminal episode during which the actor is a major participant in the commission or  
122 attempted commission of:

123 (a) child abuse, Subsection 76-5-109(2)(a);

124 (b) child kidnapping, Section 76-5-301.1;

125 (c) rape of a child, Section 76-5-402.1;

126 (d) object rape of a child, Section 76-5-402.3;

127 (e) sodomy on a child, Section 76-5-403.1; or

128 (f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

129 [~~2~~] (3) Aggravated murder is a capital felony.

130 [~~3~~] (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted  
131 aggravated murder that the defendant caused the death of another or attempted to cause the  
132 death of another:

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

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

138 (b) Under Subsection [~~3~~] (4)(a)(i), emotional distress does not include:

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

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

141 (c) The reasonableness of an explanation or excuse under Subsection [~~3~~] (4)(a)(i) or

142 the reasonable belief of the actor under Subsection [~~(3)~~] (4)(a)(ii) shall be determined from the  
143 viewpoint of a reasonable person under the then existing circumstances.

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

145 (i) aggravated murder to murder; and

146 (ii) attempted aggravated murder to attempted murder.

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

148 **76-5-203. Murder.**

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

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

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

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

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

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

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

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

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

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

160 (j) sexual abuse of a child or aggravated sexual abuse of a child under Section  
161 76-5-404.1;

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

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

164 (m) forcible sodomy under Section 76-5-403;

165 (n) aggravated sexual assault under Section 76-5-405;

166 (o) arson under Section 76-6-102;

167 (p) aggravated arson under Section 76-6-103;

168 (q) burglary under Section 76-6-202;

169 (r) aggravated burglary under Section 76-6-203;

- 170 (s) robbery under Section 76-6-301;
- 171 (t) aggravated robbery under Section 76-6-302;
- 172 (u) escape or aggravated escape under Section 76-8-309; or
- 173 (v) a felony violation of Subsection 76-10-508(2) regarding discharge of a firearm or
- 174 dangerous weapon.
- 175 (2) Criminal homicide constitutes murder if:
- 176 (a) the actor intentionally or knowingly causes the death of another;
- 177 (b) intending to cause serious bodily injury to another, the actor commits an act clearly
- 178 dangerous to human life that causes the death of another;
- 179 (c) acting under circumstances evidencing a depraved indifference to human life, the
- 180 actor knowingly engages in conduct which creates a grave risk of death to another and thereby
- 181 causes the death of another;
- 182 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
- 183 flight from the commission or attempted commission of any predicate offense, or is a party to
- 184 the predicate offense;
- 185 (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of
- 186 the commission, attempted commission, or immediate flight from the commission or attempted
- 187 commission of any predicate offense; and
- 188 (iii) the actor acted with the intent required as an element of the predicate offense;
- 189 (e) the actor recklessly causes the death of a peace officer while in the commission or
- 190 attempted commission of:
- 191 (i) an assault against a peace officer under Section 76-5-102.4; or
- 192 (ii) interference with a peace officer while making a lawful arrest under Section
- 193 76-8-305 if the actor uses force against a peace officer;
- 194 (f) commits a homicide which would be aggravated murder, but the offense is reduced
- 195 pursuant to Subsection 76-5-202[~~(3)~~] (4); or
- 196 (g) the actor commits aggravated murder, but special mitigation is established under
- 197 Section 76-5-205.5.

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

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

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

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

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

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

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

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

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

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

215 (i) murder to manslaughter; and

216 (ii) attempted murder to attempted manslaughter.