

**CRIMINAL PENALTIES REVISIONS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott K. Jenkins**

House Sponsor: Curtis Oda

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**LONG TITLE**

**General Description:**

This bill amends provisions of the Utah Criminal Code relating to criminal penalties.

**Highlighted Provisions:**

This bill:

- ▶ provides that attempt to commit a felony punishable by imprisonment for life without parole is a first degree felony;
- ▶ provides that a person who is convicted of aggravated murder, based on an aggravating circumstance that also constitutes a separate offense, may also be convicted of, and punished for, the separate offense; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-4-102**, as last amended by Laws of Utah 2002, Chapter 57

**76-5-202**, as last amended by Laws of Utah 2007, Chapters 275, 340, and 345

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



28 Section 1. Section **76-4-102** is amended to read:

29 **76-4-102. Attempt -- Classification of offenses.**

30 Criminal attempt to commit:

31 (1) a capital felony, or a felony punishable by imprisonment for life without parole, is a  
32 first degree felony;

33 (2) a first degree felony is a second degree felony, except that an attempt to commit any  
34 of the following offenses is a first degree felony punishable by imprisonment for an  
35 indeterminate term of not fewer than three years and which may be for life:

36 (a) murder, a violation of Subsection 76-5-203(2)(a), if the victim or another suffers  
37 serious bodily injury in the course of the actor's commission of the offense;

38 (b) child kidnapping, a violation of Section 76-5-301.1; or

39 (c) any of the felonies described in Title 76, Chapter 5, Part 4, Sexual Offenses, that are  
40 first degree felonies;

41 (3) a second degree felony is a third degree felony;

42 (4) a third degree felony is a class A misdemeanor;

43 (5) a class A misdemeanor is a class B misdemeanor;

44 (6) a class B misdemeanor is a class C misdemeanor; and

45 (7) a class C misdemeanor is punishable by a penalty not exceeding one half the penalty  
46 for a class C misdemeanor.

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

48 **76-5-202. Aggravated murder.**

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

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

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

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

58 (d) the homicide was committed incident to an act, scheme, course of conduct, or

59 criminal episode during which the actor committed or attempted to commit aggravated robbery,  
60 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon  
61 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child  
62 abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson,  
63 arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child  
64 kidnapping;

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

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

71 (g) the homicide was committed for pecuniary gain;

72 (h) the defendant committed, or engaged or employed another person to commit the  
73 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration  
74 for commission of the homicide;

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

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

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

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

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

80 (v) an offense committed in another jurisdiction which if committed in this state would  
81 be a violation of a crime listed in this Subsection (1)(i);

82 (j) the actor was previously convicted of:

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

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

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

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

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

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

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

- 90 (viii) object rape, Section 76-5-402.2;
- 91 (ix) object rape of a child, Section 76-5-402.3;
- 92 (x) forcible sodomy, Section 76-5-403;
- 93 (xi) sodomy on a child, Section 76-5-403.1;
- 94 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 95 (xiii) aggravated sexual assault, Section 76-5-405;
- 96 (xiv) aggravated arson, Section 76-6-103;
- 97 (xv) aggravated burglary, Section 76-6-203;
- 98 (xvi) aggravated robbery, Section 76-6-302; or
- 99 (xvii) an offense committed in another jurisdiction which if committed in this state
- 100 would be a violation of a crime listed in this Subsection (1)(j);
- 101 (k) the homicide was committed for the purpose of:
- 102 (i) preventing a witness from testifying;
- 103 (ii) preventing a person from providing evidence or participating in any legal
- 104 proceedings or official investigation;
- 105 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 106 any legal proceedings or official investigation; or
- 107 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 108 (l) the victim is or has been a local, state, or federal public official, or a candidate for
- 109 public office, and the homicide is based on, is caused by, or is related to that official position,
- 110 act, capacity, or candidacy;
- 111 (m) the victim is or has been a peace officer, law enforcement officer, executive
- 112 officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror,
- 113 probation officer, or parole officer, and the victim is either on duty or the homicide is based on,
- 114 is caused by, or is related to that official position, and the actor knew, or reasonably should
- 115 have known, that the victim holds or has held that official position;
- 116 (n) the homicide was committed:
- 117 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
- 118 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
- 119 structure, or was mailed or delivered; or
- 120 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;

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

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

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

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

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

135 (t) the victim was younger than 14 years of age.

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

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

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

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

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

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

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

146 (3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder  
147 is a capital felony.

148 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder  
149 is a noncapital first degree felony punishable by imprisonment for life without parole or by an  
150 indeterminate term of not less than 20 years and which may be for life.

151 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice

152 of intent to seek the death penalty. The notice shall be served on the defendant or defense  
153 counsel and filed with the court.

154 (ii) Notice of intent to seek the death penalty may be served and filed more than 60  
155 days after the arraignment upon written stipulation of the parties or upon a finding by the court  
156 of good cause.

157 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to  
158 noncapital first degree felony aggravated murder during the period in which the prosecutor may  
159 file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

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

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

165 (ii) under a reasonable belief that the circumstances provided a legal justification or  
166 excuse for ~~his~~ the defendant's conduct although the conduct was not legally justifiable or  
167 excusable under the existing circumstances.

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

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

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

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

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

175 (i) aggravated murder to murder; and

176 (ii) attempted aggravated murder to attempted murder.

177 (5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes  
178 a separate offense does not merge with the crime of aggravated murder.

179 (b) A person who is convicted of aggravated murder, based on an aggravating  
180 circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be  
181 convicted of, and punished for, the separate offense.

**Legislative Review Note**  
as of 1-16-08 5:02 PM

**Office of Legislative Research and General Counsel**

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**S.B. 150 - Criminal Penalties Revisions**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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