

***Superseded 5/9/2017***

**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 incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted 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 as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;
  - (e) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as defined in Subsection 76-9-704(2)(e);
  - (f) 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;
  - (g) the homicide was committed for pecuniary gain;
  - (h) 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;
  - (i) the actor previously committed or was convicted of:
    - (i) aggravated murder under this section;
    - (ii) attempted aggravated murder under this section;
    - (iii) murder, Section 76-5-203;
    - (iv) attempted murder, Section 76-5-203; or
    - (v) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(i);
  - (j) the actor was previously convicted of:
    - (i) aggravated assault, Subsection 76-5-103(2);
    - (ii) mayhem, Section 76-5-105;
    - (iii) kidnapping, Section 76-5-301;
    - (iv) child kidnapping, Section 76-5-301.1;
    - (v) aggravated kidnapping, Section 76-5-302;
    - (vi) rape, Section 76-5-402;
    - (vii) rape of a child, Section 76-5-402.1;
    - (viii) object rape, Section 76-5-402.2;
    - (ix) object rape of a child, Section 76-5-402.3;
    - (x) forcible sodomy, Section 76-5-403;
    - (xi) sodomy on a child, Section 76-5-403.1;
    - (xii) aggravated sexual abuse of a child, Section 76-5-404.1;

- (xiii) aggravated sexual assault, Section 76-5-405;
- (xiv) aggravated arson, Section 76-6-103;
- (xv) aggravated burglary, Section 76-6-203;
- (xvi) aggravated robbery, Section 76-6-302;
- (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- (xviii) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(j);
- (k) 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;
- (l) 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;
- (m) 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;
- (n) the homicide was committed:
  - (i) 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; or
  - (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;
- (o) 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;
- (p) 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;
- (q) the victim was a person held or otherwise detained as a shield, hostage, or for ransom;
- (r) 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;
- (s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or after death, in a manner demonstrating the actor's depravity of mind; or
- (t) the victim, at the time of the death of the victim:
  - (i) was younger than 14 years of age; and
  - (ii) was not an unborn child.
- (2) Criminal homicide constitutes aggravated murder if the actor, with reckless indifference to human life, causes the death of another incident to an act, scheme, course of conduct, or criminal episode during which the actor is a major participant in the commission or attempted commission of:
  - (a) child abuse, Subsection 76-5-109(2)(a);

- (b) child kidnapping, Section 76-5-301.1;
- (c) rape of a child, Section 76-5-402.1;
- (d) object rape of a child, Section 76-5-402.3;
- (e) sodomy on a child, Section 76-5-403.1; or
- (f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

- (3)
  - (a) If a notice of intent to seek the death penalty has been filed, aggravated murder is a capital felony.
  - (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.
  - (c)
    - (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty. The notice shall be served on the defendant or defense counsel and filed with the court.
    - (ii) Notice of intent to seek the death penalty may be served and filed more than 60 days after the arraignment upon written stipulation of the parties or upon a finding by the court of good cause.
  - (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to noncapital first degree felony aggravated murder during the period in which the prosecutor may file a notice of intent to seek the death penalty under Subsection (3)(c)(i).
  - (e) If the defendant was younger than 18 years of age at the time the offense was committed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.
- (4)
  - (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 under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.
  - (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.
  - (c) This affirmative defense reduces charges only as follows:
    - (i) aggravated murder to murder; and
    - (ii) attempted aggravated murder to attempted murder.
- (5)
  - (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes a separate offense does not merge with the crime of aggravated murder.
  - (b) A person who is convicted of aggravated murder, based on an aggravating circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.