

Effective 5/4/2022

76-5-202 Aggravated murder -- Penalties -- Affirmative defense and special mitigation -- Separate offense.

- (1)
- (a) As used in this section:
 - (i) "Correctional officer" means the same as that term is defined in Section 53-13-104.
 - (ii) "Emergency responder" means the same as that term is defined in Section 53-2b-102.
 - (iii) "Federal officer" means the same as that term is defined in Section 53-13-106.
 - (iv) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.
 - (v) "Peace officer" means:
 - (A) a correctional officer, federal officer, law enforcement officer, or special function officer; or
 - (B) any other person who may exercise peace officer authority in accordance with Title 53, Chapter 13, Peace Officer Classifications.
 - (vi) "Special function officer" means the same as that term is defined in Section 53-13-105.
 - (vii) "Target a law enforcement officer" means an act:
 - (A) involving the unlawful use of force and violence against a law enforcement officer;
 - (B) that causes serious bodily injury or death; and
 - (C) that is in furtherance of political or social objectives in order to intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government.
 - (viii) "Weapon of mass destruction" means the same as that term is defined in Section 76-10-401.
 - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2)
- (a) An actor commits aggravated murder if the actor intentionally or knowingly causes the death of another individual under any of the following circumstances:
 - (i) the actor committed homicide while confined in a jail or other correctional institution;
 - (ii)
 - (A) the actor committed homicide incident to one act, scheme, course of conduct, or criminal episode during which two or more individuals other than the actor were killed; or
 - (B) the actor, during commission of the homicide, attempted to kill one or more other individuals in addition to the deceased individual;
 - (iii) the actor knowingly created a great risk of death to another individual other than the deceased individual and the actor;
 - (iv) the actor committed homicide 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, aggravated child abuse as described in Subsection 76-5-109.2(3)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;
 - (v) the actor committed homicide 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 described in Subsection 76-9-704(2)(e);
 - (vi) the actor committed homicide for the purpose of avoiding or preventing an arrest of the actor or another individual by a peace officer acting under color of legal authority or for the purpose of effecting the actor's or another individual's escape from lawful custody;
 - (vii) the actor committed homicide for pecuniary gain;

- (viii) the actor committed, engaged, or employed another person to commit the homicide subject to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;
- (ix) the actor previously committed or was convicted of:
 - (A) aggravated murder under this section;
 - (B) attempted aggravated murder under this section;
 - (C) murder, under Section 76-5-203;
 - (D) attempted murder, under Section 76-5-203; or
 - (E) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (2)(a)(ix);
- (x) the actor was previously convicted of:
 - (A) aggravated assault, under Section 76-5-103;
 - (B) mayhem, under Section 76-5-105;
 - (C) kidnapping, under Section 76-5-301;
 - (D) child kidnapping, under Section 76-5-301.1;
 - (E) aggravated kidnapping, under Section 76-5-302;
 - (F) rape, under Section 76-5-402;
 - (G) rape of a child, under Section 76-5-402.1;
 - (H) object rape, under Section 76-5-402.2;
 - (I) object rape of a child, under Section 76-5-402.3;
 - (J) forcible sodomy, under Section 76-5-403;
 - (K) sodomy on a child, under Section 76-5-403.1;
 - (L) aggravated sexual abuse of a child, under Section 76-5-404.3;
 - (M) aggravated sexual assault, under Section 76-5-405;
 - (N) aggravated arson, under Section 76-6-103;
 - (O) aggravated burglary, under Section 76-6-203;
 - (P) aggravated robbery, under Section 76-6-302;
 - (Q) felony discharge of a firearm, under Section 76-10-508.1; or
 - (R) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (2)(a)(x);
- (xi) the actor committed homicide for the purpose of:
 - (A) preventing a witness from testifying;
 - (B) preventing a person from providing evidence or participating in any legal proceedings or official investigation;
 - (C) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or
 - (D) disrupting or hindering any lawful governmental function or enforcement of laws;
- (xii) the deceased individual was 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;
- (xiii) the deceased individual was on duty in a verified position or the homicide is based on, is caused by, or is related to the deceased individual's position, and the actor knew, or reasonably should have known, that the deceased individual holds or has held the position of:
 - (A) a peace officer;
 - (B) an executive officer, prosecuting officer, jailer, or prison official;
 - (C) a firefighter, search and rescue personnel, emergency medical personnel, ambulance personnel, or any other emergency responder;

- (D) a judge or other court official, juror, probation officer, or parole officer; or
- (E) a security officer contracted to secure, guard, or otherwise protect tangible personal property, real property, or the life and well-being of human or animal life in the area of the offense;
- (xiv) the actor committed homicide:
 - (A) 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;
 - (B) by means of any weapon of mass destruction; or
 - (C) to target a law enforcement officer;
- (xv) the actor committed homicide during the act of unlawfully assuming control of an aircraft, train, or other public conveyance by use of threats or force with intent to:
 - (A) obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard;
 - (B) direct the route or movement of the public conveyance; or
 - (C) otherwise exert control over the public conveyance;
- (xvi) the actor committed homicide 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;
- (xvii) the deceased individual was held or otherwise detained as a shield, hostage, or for ransom;
- (xviii) the actor committed homicide 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 deceased individual before death;
- (xix) the actor dismembers, mutilates, or disfigures the deceased individual's body, whether before or after death, in a manner demonstrating the actor's depravity of mind; or
- (xx) the deceased individual, at the time of the death of the deceased individual:
 - (A) was younger than 14 years old; and
 - (B) was not an unborn child.
- (b) An actor commits aggravated murder if the actor, with reckless indifference to human life, causes the death of another individual 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:
 - (i) aggravated child abuse, punishable as a felony of the second degree under Subsection 76-5-109.2(3)(a);
 - (ii) child kidnapping, under Section 76-5-301.1;
 - (iii) rape of a child, under Section 76-5-402.1;
 - (iv) object rape of a child, under Section 76-5-402.3;
 - (v) sodomy on a child, under Section 76-5-403.1; or
 - (vi) sexual abuse or aggravated sexual abuse of a child, under Section 76-5-404.1.
- (3)
 - (a) If a notice of intent to seek the death penalty has been filed, a violation of Subsection (2) 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.
 - (ii) The notice shall be served on the defendant or defense counsel and filed with the court.

- (iii) 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 old at the time the offense was committed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.
- (f) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section, are proved beyond a reasonable doubt, and also finds that the existence of special mitigation is established by a preponderance of the evidence and in accordance with Section 76-5-205.5, the court shall enter a judgment of conviction as follows:
 - (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall enter a judgment of conviction for murder; or
 - (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the court shall enter a judgment of conviction for attempted murder.
- (4)
 - (a) It is an affirmative defense to a charge of aggravated murder or attempted aggravated murder that the actor 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) Notwithstanding Subsection (3)(a) or (3)(b), if the trier of fact finds the elements of aggravated murder, or alternatively, attempted aggravated murder, as described in this section, are proved beyond a reasonable doubt, and also finds the affirmative defense described in this Subsection (4) is not disproven beyond a reasonable doubt, the court shall enter a judgment of conviction as follows:
 - (i) if the trier of fact finds the defendant guilty of aggravated murder, the court shall enter a judgment of conviction for murder; or
 - (ii) if the trier of fact finds the defendant guilty of attempted aggravated murder, the court shall enter a judgment of conviction for attempted murder.
- (5)
 - (a) Any aggravating circumstance described in Subsection (2) that constitutes a separate offense does not merge with the crime of aggravated murder.
 - (b) An actor who is convicted of aggravated murder, based on an aggravating circumstance described in Subsection (2) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Amended by Chapter 181, 2022 General Session