

76-5-203 Murder.

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

- (a) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;
- (b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18 years of age;
- (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 of a child under Section 76-5-402.1;
- (g) object rape of a child under Section 76-5-402.3;
- (h) sodomy upon a child under Section 76-5-403.1;
- (i) forcible sexual abuse under Section 76-5-404;
- (j) sexual abuse of a child or aggravated sexual abuse of a child under Section 76-5-404.1;
- (k) rape under Section 76-5-402;
- (l) object rape under Section 76-5-402.2;
- (m) forcible sodomy under Section 76-5-403;
- (n) aggravated sexual assault under Section 76-5-405;
- (o) arson under Section 76-6-102;
- (p) aggravated arson under Section 76-6-103;
- (q) burglary under Section 76-6-202;
- (r) aggravated burglary under Section 76-6-203;
- (s) robbery under Section 76-6-301;
- (t) aggravated robbery under Section 76-6-302;
- (u) escape or aggravated escape under Section 76-8-309; or
- (v) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a firearm or dangerous weapon.

(2) Criminal homicide constitutes murder if:

- (a) the actor intentionally or knowingly causes the death of another;
- (b) intending to cause serious bodily injury to another, the actor commits an act clearly dangerous to human life that causes the death of another;
- (c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly engages in conduct which creates a grave risk of death to another and thereby causes the death of another;
- (d)
 - (i) the actor is engaged in the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense, or is a party to the predicate offense;
 - (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense; and
 - (iii) the actor acted with the intent required as an element of the predicate offense;
- (e) the actor recklessly causes the death of a peace officer or military service member in uniform while in the commission or attempted commission of:
 - (i) an assault against a peace officer under Section 76-5-102.4;
 - (ii) interference with a peace officer while making a lawful arrest under Section 76-8-305 if the actor uses force against a peace officer; or
 - (iii) an assault against a military service member in uniform under Section 76-5-102.4;

- (f) commits a homicide which would be aggravated murder, but the offense is reduced pursuant to Subsection 76-5-202(4); or
 - (g) the actor commits aggravated murder, but special mitigation is established under Section 76-5-205.5.
- (3)
- (a) Murder is a first degree felony.
 - (b) A person who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.
- (4)
- (a) It is an affirmative defense to a charge of murder or attempted 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 from:
 - (i) murder to manslaughter; and
 - (ii) attempted murder to attempted manslaughter.
- (5)
- (a) Any predicate offense described in Subsection (1) that constitutes a separate offense does not merge with the crime of murder.
 - (b) A person who is convicted of murder, based on a predicate offense described in Subsection (1) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Amended by Chapter 125, 2009 General Session
Amended by Chapter 206, 2009 General Session