

**Effective 5/7/2025**

**Superseded 5/6/2026**

**76-5-203 Murder -- Penalties-- Affirmative defense and special mitigation -- Separate offenses. -- Affirmative defense and special mitigation -- Separate offenses.**

- (1)
- (a) As used in this section, "predicate offense" means:
    - (i) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;
    - (ii) aggravated child abuse, under Subsection 76-5-109.2(3)(a), when the abused individual is younger than 18 years old;
    - (iii) child torture under Section 76-5-109.4;
    - (iv) kidnapping under Section 76-5-301;
    - (v) child kidnapping under Section 76-5-301.1;
    - (vi) aggravated kidnapping under Section 76-5-302;
    - (vii) rape under Section 76-5-402;
    - (viii) rape of a child under Section 76-5-402.1;
    - (ix) object rape under Section 76-5-402.2;
    - (x) object rape of a child under Section 76-5-402.3;
    - (xi) forcible sodomy under Section 76-5-403;
    - (xii) sodomy upon a child under Section 76-5-403.1;
    - (xiii) forcible sexual abuse under Section 76-5-404;
    - (xiv) sexual abuse of a child under Section 76-5-404.1;
    - (xv) aggravated sexual abuse of a child under Section 76-5-404.3;
    - (xvi) aggravated sexual assault under Section 76-5-405;
    - (xvii) arson under Section 76-6-102;
    - (xviii) aggravated arson under Section 76-6-103;
    - (xix) burglary under Section 76-6-202;
    - (xx) aggravated burglary under Section 76-6-203;
    - (xxi) robbery under Section 76-6-301;
    - (xxii) aggravated robbery under Section 76-6-302;
    - (xxiii) escape under Section 76-8-309;
    - (xxiv) aggravated escape under Section 76-8-309.3; or
    - (xxv) a violation of Section 76-11-209 or 76-11-210 regarding discharge of a firearm or dangerous weapon.
  - (b) Terms defined in Section 76-1-101.5 apply to this section.
- (2) An actor commits murder if:
- (a) the actor intentionally or knowingly causes the death of another individual;
  - (b) intending to cause serious bodily injury to another individual, the actor commits an act clearly dangerous to human life that causes the death of the other individual;
  - (c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly engages in conduct that creates a grave risk of death to another individual and thereby causes the death of the other individual;
  - (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) an individual other than a party described 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 the peace officer; or
    - (iii) an assault against a military service member in uniform under Section 76-5-102.4; or
  - (f) the actor commits a homicide that would be aggravated murder, but the offense is reduced in accordance with Subsection 76-5-202(4).
- (3)
- (a)
    - (i) A violation of Subsection (2) is a first degree felony.
    - (ii) A defendant 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.
  - (b) Notwithstanding Subsection (3)(a), if the trier of fact finds the elements of murder, or alternatively, attempted 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 murder, the court shall enter a judgment of conviction for manslaughter; or
    - (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall, notwithstanding Subsection 76-4-102(1)(b) or 76-4-102(1)(c), enter a judgment of conviction for attempted manslaughter.
- (4)
- (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another individual or attempted to cause the death of another individual 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), if the trier of fact finds the elements of murder, or alternatively, attempted 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 murder, the court shall enter a judgment of conviction for manslaughter; or
    - (ii) if the trier of fact finds the defendant guilty of attempted murder, the court shall enter a judgment of conviction for attempted manslaughter.
- (5)
- (a) Any predicate offense that constitutes a separate offense does not merge with the crime of murder.
  - (b) An actor who is convicted of murder, based on a predicate offense that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.