

**Senator Lyle W. Hillyard** proposes to substitute the following bill:

**MURDER AND MANSLAUGHTER AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: David L. Gladwell**

AN ACT RELATING TO CRIMINAL LAW; PROVIDING AFFIRMATIVE DEFENSES TO CERTAIN HOMICIDE AND ATTEMPTED HOMICIDE OFFENSES; RESTRUCTURING THE MANSLAUGHTER STATUTE TO REFLECT THESE CHANGES; AND PROVIDING PROCEDURE AND LIMITATIONS REGARDING THE DEFENSES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**76-5-202**, as last amended by Chapter 11, Laws of Utah 1997

**76-5-203**, as last amended by Chapter 123, Laws of Utah 1996

**76-5-205**, as last amended by Chapter 177, Laws of Utah 1985

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

Section 1. Section **76-5-202** is amended to read:

**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;

26 (d) the homicide was committed while the actor was engaged in the commission of, or an  
27 attempt to commit, or flight after committing or attempting to commit, aggravated robbery,  
28 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon  
29 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child  
30 abuse of a child under the age of 14 years, as otherwise defined in Subsection 76-5-109(2)(a), or  
31 aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated  
32 kidnaping, kidnaping, or child kidnaping;

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

36 (f) the homicide was committed for pecuniary or other personal gain;

37 (g) the defendant committed, or engaged or employed another person to commit the  
38 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration  
39 for commission of the homicide;

40 (h) the actor was previously convicted of aggravated murder, murder, or of a felony  
41 involving the use or threat of violence to a person. For the purpose of this subsection an offense  
42 committed in another jurisdiction, which if committed in Utah would be punishable as aggravated  
43 murder or murder, is considered aggravated murder or murder;

44 (i) the homicide was committed for the purpose of:

45 (i) preventing a witness from testifying;

46 (ii) preventing a person from providing evidence or participating in any legal proceedings  
47 or official investigation;

48 (iii) retaliating against a person for testifying, providing evidence, or participating in any  
49 legal proceedings or official investigation; or

50 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;

51 (j) the victim is or has been a local, state, or federal public official, or a candidate for  
52 public office, and the homicide is based on, is caused by, or is related to that official position, act,  
53 capacity, or candidacy;

54 (k) the victim is or has been a peace officer, law enforcement officer, executive officer,  
55 prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation  
56 officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by,

57 or is related to that official position, and the actor knew, or reasonably should have known, that  
58 the victim holds or has held that official position;

59 (l) the homicide was committed by means of a destructive device, bomb, explosive,  
60 incendiary device, or similar device which was planted, hidden, or concealed in any place, area,  
61 dwelling, building, or structure, or was mailed or delivered;

62 (m) the homicide was committed during the act of unlawfully assuming control of any  
63 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any  
64 valuable consideration for the release of the public conveyance or any passenger, crew member,  
65 or any other person aboard, or to direct the route or movement of the public conveyance or  
66 otherwise exert control over the public conveyance;

67 (n) the homicide was committed by means of the administration of a poison or of any  
68 lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

69 (o) the victim was a person held or otherwise detained as a shield, hostage, or for ransom;

70 (p) the actor was under a sentence of life imprisonment or a sentence of death at the time  
71 of the commission of the homicide; or

72 (q) the homicide was committed in an especially heinous, atrocious, cruel, or exceptionally  
73 depraved manner, any of which must be demonstrated by physical torture, serious physical abuse,  
74 or serious bodily injury of the victim before death.

75 (2) Aggravated murder is a capital offense.

76 (3) (a) It is an affirmative defense to a charge of aggravated murder or attempted  
77 aggravated murder that the defendant caused the death of another or attempted to cause the death  
78 of another:

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

81 (ii) under a reasonable belief that the circumstances provided a legal justification or excuse  
82 for his conduct although the conduct was not legally justifiable or excusable under the existing  
83 circumstances.

84 (b) Under Subsection (3)(a)(i), emotional distress does not include:

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

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

87 (c) The reasonableness of an explanation or excuse under Subsection (3)(a)(i) or the

88 reasonable belief of the actor under Subsection (3)(a)(ii) shall be determined from the viewpoint  
89 of a reasonable person under the then existing circumstances.

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

91 (i) aggravated murder to murder; and

92 (ii) attempted aggravated murder to attempted murder.

93 Section 2. Section **76-5-203** is amended to read:

94 **76-5-203. Murder.**

95 (1) Criminal homicide constitutes murder if the actor:

96 (a) intentionally or knowingly causes the death of another;

97 (b) intending to cause serious bodily injury to another commits an act clearly dangerous  
98 to human life that causes the death of another;

99 (c) acting under circumstances evidencing a depraved indifference to human life engages  
100 in conduct which creates a grave risk of death to another and thereby causes the death of another;

101 (d) while in the commission, attempted commission, or immediate flight from the  
102 commission or attempted commission of aggravated robbery, robbery, rape, object rape, forcible  
103 sodomy, or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary,  
104 aggravated kidnapping, kidnapping, child kidnapping, rape of a child, object rape of a child,  
105 sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of  
106 a child, or child abuse, as defined in Subsection 76-5-109 (2)(a), when the victim is younger than  
107 14 years of age, causes the death of another person other than a party as defined in Section  
108 76-2-202; [or]

109 (e) recklessly causes the death of a peace officer while in the commission or attempted  
110 commission of:

111 (i) an assault against a peace officer as defined in Section 76-5-102.4; or

112 (ii) interference with a peace officer while making a lawful arrest as defined in Section  
113 76-8-305 if the actor uses force against a peace officer[.]; or

114 (f) commits a homicide which would be aggravated murder, but the offense is reduced  
115 pursuant to Subsection 76-5-202(3).

116 (2) Murder is a first degree felony.

117 (3) (a) It is an affirmative defense to a charge of murder or attempted murder that the  
118 defendant caused the death of another or attempted to cause the death of another:

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

121 (ii) under a reasonable belief that the circumstances provided a legal justification or excuse  
122 for his conduct although the conduct was not legally justifiable or excusable under the existing  
123 circumstances.

124 (b) Under Subsection (3)(a)(i) emotional distress does not include:

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

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

127 (c) The reasonableness of an explanation or excuse under Subsection (3)(a)(i) or the  
128 reasonable belief of the actor under Subsection (3)(a)(ii) shall be determined from the viewpoint  
129 of a reasonable person under the then existing circumstances.

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

131 (i) murder to manslaughter; and

132 (ii) attempted murder to attempted manslaughter.

133 Section 3. Section **76-5-205** is amended to read:

134 **76-5-205. Manslaughter.**

135 (1) Criminal homicide constitutes manslaughter if the actor:

136 (a) recklessly causes the death of another; or

137 ~~[(b) causes the death of another under the influence of extreme emotional disturbance for~~  
138 ~~which there is a reasonable explanation or excuse; or]~~

139 ~~[(c) causes the death of another under circumstances where the actor reasonably believes~~  
140 ~~the circumstances provide a legal justification or excuse for his conduct although the conduct is~~  
141 ~~not legally justifiable or excusable under the existing circumstances.]~~

142 ~~[(2) Under Subsection (1) (b), emotional disturbance does not include a condition resulting~~  
143 ~~from mental illness as defined in Section 76-2-305.]~~

144 ~~[(3) The reasonableness of an explanation or excuse under Subsection (1) (b), or the~~  
145 ~~reasonable belief of the actor under Subsection (1) (c), shall be determined from the viewpoint of~~  
146 ~~a reasonable person under the then existing circumstances.]~~

147 (b) commits a homicide which would be murder, but the offense is reduced pursuant to  
148 Subsection 76-5-203(3).

149 ~~[(4)]~~ (2) Manslaughter is a felony of the second degree.