

1 **CHILD ABUSE HOMICIDE**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Gordon E. Snow**

5 AN ACT RELATING TO CRIMINAL LAW; AMENDING PROVISIONS REGARDING THE
6 VICTIM'S AGE IN MURDER OFFENSES INVOLVING CHILD ABUSE.

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

8 AMENDS:

9 **76-5-109**, as last amended by Chapter 67, Laws of Utah 1999

10 **76-5-202**, as last amended by Chapter 90, Laws of Utah 1999

11 **76-5-203**, as last amended by Chapters 2 and 90, Laws of Utah 1999

12 **76-5-208**, as last amended by Chapter 303, Laws of Utah 1997

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

14 Section 1. Section **76-5-109** is amended to read:

15 **76-5-109. Child abuse.**

16 (1) As used in this section:

17 (a) "Child" means a human being who is [17] under 18 years of age [~~or less~~].

18 (b) "Child abuse" means any offense described in Subsection (2) or (3), or in Section
19 76-5-109.1.

20 (c) "Physical injury" means an injury to or condition of a child which impairs the physical
21 condition of the child, including:

22 (i) a bruise or other contusion of the skin;

23 (ii) a minor laceration or abrasion;

24 (iii) failure to thrive or malnutrition; or

25 (iv) any other condition which imperils the child's health or welfare and which is not a
26 serious physical injury as defined in Subsection (1)(d).

27 (d) "Serious physical injury" means any physical injury or set of injuries which seriously

28 impairs the child's health, or which involves physical torture or causes serious emotional harm to
29 the child, or which involves a substantial risk of death to the child, including:

- 30 (i) fracture of any bone or bones;
- 31 (ii) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
32 shaking, or causing the child's head to impact with an object or surface;
- 33 (iii) any burn, including burns inflicted by hot water, or those caused by placing a hot
34 object upon the skin or body of the child;
- 35 (iv) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
- 36 (v) any combination of two or more physical injuries inflicted by the same person, either
37 at the same time or on different occasions;
- 38 (vi) any damage to internal organs of the body;
- 39 (vii) any conduct toward a child which results in severe emotional harm, severe
40 developmental delay or retardation, or severe impairment of the child's ability to function;
- 41 (viii) any injury which creates a permanent disfigurement or protracted loss or impairment
42 of the function of a bodily member, limb, or organ;
- 43 (ix) any conduct which causes a child to cease breathing, even if resuscitation is successful
44 following the conduct; or
- 45 (x) any conduct which results in starvation or failure to thrive or malnutrition that
46 jeopardizes the child's life.

47 (2) Any person who inflicts upon a child serious physical injury or, having the care or
48 custody of such child, causes or permits another to inflict serious physical injury upon a child is
49 guilty of an offense as follows:

- 50 (a) if done intentionally or knowingly, the offense is a felony of the second degree;
- 51 (b) if done recklessly, the offense is a felony of the third degree; or
- 52 (c) if done with criminal negligence, the offense is a class A misdemeanor.

53 (3) Any person who inflicts upon a child physical injury or, having the care or custody of
54 such child, causes or permits another to inflict physical injury upon a child is guilty of an offense
55 as follows:

- 56 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
- 57 (b) if done recklessly, the offense is a class B misdemeanor; or
- 58 (c) if done with criminal negligence, the offense is a class C misdemeanor.

59 (4) A parent or legal guardian who provides a child with treatment by spiritual means
60 alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of
61 an established church or religious denomination of which the parent or legal guardian is a member
62 or adherent shall not, for that reason alone, be deemed to have committed an offense under this
63 section.

64 Section 2. Section **76-5-202** is amended to read:

65 **76-5-202. Aggravated murder.**

66 (1) Criminal homicide constitutes aggravated murder if the actor intentionally or
67 knowingly causes the death of another under any of the following circumstances:

68 (a) the homicide was committed by a person who is confined in a jail or other correctional
69 institution;

70 (b) the homicide was committed incident to one act, scheme, course of conduct, or
71 criminal episode during which two or more persons were killed, or during which the actor
72 attempted to kill one or more persons in addition to the victim who was killed;

73 (c) the actor knowingly created a great risk of death to a person other than the victim and
74 the actor;

75 (d) the homicide was committed while the actor was engaged in the commission of, or an
76 attempt to commit, or flight after committing or attempting to commit, aggravated robbery,
77 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon
78 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child
79 abuse [~~of a child under the age of 14 years,~~] as [~~otherwise~~] defined in Subsection 76-5-109(2)(a),
80 or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated
81 kidnaping, kidnaping, or child kidnaping;

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

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

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

89 (h) the actor was previously convicted of aggravated murder, murder, or of a felony

90 involving the use or threat of violence to a person. For the purpose of this subsection an offense
91 committed in another jurisdiction, which if committed in Utah would be punishable as aggravated
92 murder or murder, is considered aggravated murder or murder;

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

94 (i) preventing a witness from testifying;

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

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

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

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

103 (k) the victim is or has been a peace officer, law enforcement officer, executive officer,
104 prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation
105 officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by,
106 or is related to that official position, and the actor knew, or reasonably should have known, that
107 the victim holds or has held that official position;

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

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

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

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

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

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

124 (2) Aggravated murder is a capital offense.

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

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

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

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

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

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

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

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

140 (i) aggravated murder to murder; and

141 (ii) attempted aggravated murder to attempted murder.

142 Section 3. Section **76-5-203** is amended to read:

143 **76-5-203. Murder.**

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

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

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

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

150 (d) while in the commission, attempted commission, or immediate flight from the
151 commission or attempted commission of aggravated robbery, robbery, rape, object rape, forcible

152 sodomy, or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary,
153 aggravated kidnapping, kidnapping, child kidnapping, rape of a child, object rape of a child,
154 sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of
155 a child, or child abuse, as defined in Subsection 76-5-109 (2)(a), [~~when the victim is younger than~~
156 ~~14 years of age,~~] causes the death of another person other than a party as defined in Section
157 76-2-202;

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

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

161 (ii) interference with a peace officer while making a lawful arrest as defined in Section
162 76-8-305 if the actor uses force against a peace officer;

163 (f) commits a homicide which would be aggravated murder, but the offense is reduced
164 pursuant to Subsection 76-5-202(3); or

165 (g) commits aggravated murder, but special mitigation is established under Section
166 76-5-205.5.

167 (2) Murder is a first degree felony.

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

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

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

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

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

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

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

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

182 (i) murder to manslaughter; and

183 (ii) attempted murder to attempted manslaughter.

184 Section 4. Section **76-5-208** is amended to read:

185 **76-5-208. Child abuse homicide.**

186 (1) Criminal homicide constitutes child abuse homicide if the actor causes the death of a
187 person under [17] 18 years of age and the death results from child abuse, as defined in Subsection
188 76-5-109(1):

189 (a) if done recklessly as provided in Subsection 76-5-109(2)(b);

190 (b) if done with criminal negligence as provided in Subsection 76-5-109(2)(c); or

191 (c) if done with the mental culpability as provided in Subsection 76-5-109(3)(a), (b), or

192 (c).

193 (2) Child abuse homicide as described in Subsection (1)(a) is a second degree felony.

194 (3) Child abuse homicide as described in Subsections (1)(b) and (c) is a third degree

195 felony.

Legislative Review Note
as of 12-30-99 11:08 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel