

**CRIMINAL SENTENCING AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Scott Daniels**

**This act modifies the Criminal Code by amending sentencing provisions regarding imprisonment and life imprisonment without parole and clarifying that capital offenses are capital felonies. This act creates a new section providing an enhanced penalty for specified violent offenses committed by a prisoner and amending the section dealing only with aggravated assault by a prisoner. This act amends the section that provides that a murder is aggravated murder if the defendant was previously convicted of a violent offense, by specifically listing the offenses. This act also makes cross reference corrections.**

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

AMENDS:

**76-3-201**, as last amended by Chapter 270, Laws of Utah 1999

**76-3-203.1**, as last amended by Chapter 214, Laws of Utah 2000

**76-3-206**, as last amended by Chapter 142, Laws of Utah 1992

**76-3-207**, as last amended by Chapter 137, Laws of Utah 1998

**76-3-207.5**, as enacted by Chapter 142, Laws of Utah 1992

**76-4-201**, as last amended by Chapter 32, Laws of Utah 1974

**76-5-103.5**, as last amended by Chapter 207, Laws of Utah 1997

**76-5-202**, as last amended by Chapter 125, Laws of Utah 2000

**76-8-306**, as last amended by Chapter 203, Laws of Utah 2000

**76-8-316**, as enacted by Chapter 51, Laws of Utah 1995

**77-16a-201**, as enacted by Chapter 171, Laws of Utah 1992

**77-16a-202**, as last amended by Chapter 256, Laws of Utah 2000

**77-18-5.5**, as last amended by Chapter 190, Laws of Utah 1988

**77-20-1**, as last amended by Chapter 293, Laws of Utah 1998

**77-32-201**, as enacted by Chapter 354, Laws of Utah 1997

**77-32-601**, as enacted by Chapter 354, Laws of Utah 1997

**77-32-604**, as last amended by Chapter 333, Laws of Utah 1998

**78-46-5**, as repealed and reenacted by Chapter 44, Laws of Utah 1996

ENACTS:

**76-3-203.6**, Utah Code Annotated 1953

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

Section 1. Section **76-3-201** is amended to read:

**76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil penalties -- Restitution -- Hearing.**

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; and

(ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including the accrual of interest from the time of sentencing, insured damages, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Subsection (4)(c).

(e) (i) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

(2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

- (a) to pay a fine;
- (b) to removal or disqualification from public or private office;
- (c) to probation unless otherwise specifically provided by law;
- (d) to imprisonment;
- ~~[(e) to life imprisonment;]~~
- ~~[(f)]~~ (e) on or after April 27, 1992, to life in prison without parole; or
- ~~[(g)]~~ (f) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law to:

- (i) forfeit property;
- (ii) dissolve a corporation;
- (iii) suspend or cancel a license;
- (iv) permit removal of a person from office;
- (v) cite for contempt; or
- (vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4) (a) (i) When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this subsection, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement. For purposes of restitution, a victim has the meaning as defined in Subsection (1)(e).

(ii) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (4)(c) and (4)(d).

(iii) If the court finds the defendant owes restitution, the clerk of the court shall enter an order of complete restitution as defined in Subsection (8)(b) on the civil judgment docket and provide notice of the order to the parties.

(iv) The order is considered a legal judgment enforceable under the Utah Rules of Civil Procedure, and the person in whose favor the restitution order is entered may seek enforcement of the restitution order in accordance with the Utah Rules of Civil Procedure. In addition, the

Department of Corrections may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

(v) If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover reasonable attorney's fees.

(vi) A judgment ordering restitution constitutes a lien when recorded in a judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action. Interest shall accrue on the amount ordered from the time of sentencing.

(vii) The Department of Corrections shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) (i) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(ii) In determining whether restitution is appropriate, the court shall consider the criteria in Subsection (4)(c).

(c) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(i) Complete restitution means the restitution necessary to compensate a victim for all losses caused by the defendant.

(ii) Court-ordered restitution means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

(iii) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (8).

(d) (i) If the court determines that restitution is appropriate or inappropriate under this subsection, the court shall make the reasons for the decision a part of the court record.

(ii) In any civil action brought by a victim to enforce the judgment, the defendant shall be

entitled to offset any amounts that have been paid as part of court-ordered restitution to the victim.

(iii) A judgment ordering restitution constitutes a lien when recorded in a judgment docket and shall have the same effect and is subject to the same rules as a judgment for money in a civil action. Interest shall accrue on the amount ordered from the time of sentencing.

(iv) The Department of Corrections shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(e) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow the defendant a full hearing on the issue.

(5) (a) In addition to any other sentence the court may impose, the court shall order the defendant to pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:

(A) \$75 for up to 100 miles a defendant is transported;

(B) \$125 for 100 up to 200 miles a defendant is transported; and

(C) \$250 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(6) (a) If a statute under which the defendant was convicted mandates that one of three stated

minimum terms shall be imposed, the court shall order imposition of the term of middle severity unless there are circumstances in aggravation or mitigation of the crime.

(b) Prior to or at the time of sentencing, either party may submit a statement identifying circumstances in aggravation or mitigation or presenting additional facts. If the statement is in writing, it shall be filed with the court and served on the opposing party at least four days prior to the time set for sentencing.

(c) In determining whether there are circumstances that justify imposition of the highest or lowest term, the court may consider the record in the case, the probation officer's report, other reports, including reports received under Section 76-3-404, statements in aggravation or mitigation submitted by the prosecution or the defendant, and any further evidence introduced at the sentencing hearing.

(d) The court shall set forth on the record the facts supporting and reasons for imposing the upper or lower term.

(e) In determining a just sentence, the court shall consider sentencing guidelines regarding aggravating and mitigating circumstances promulgated by the Sentencing Commission.

(7) If during the commission of a crime described as child [~~kidnaping~~] kidnapping, rape of a child, object rape of a child, sodomy upon a child, or sexual abuse of a child, the defendant causes substantial bodily injury to the child, and if the charge is set forth in the information or indictment and admitted by the defendant, or found true by a judge or jury at trial, the defendant shall be sentenced to the highest minimum term in state prison. This subsection takes precedence over any conflicting provision of law.

(8) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense, that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment; the cost of necessary physical and occupational therapy and rehabilitation; and the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim; and

(iii) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider the factors listed in Subsection (8)(b) and:

(i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines make restitution inappropriate.

(d) The court may decline to make an order or may defer entering an order of restitution if the court determines that the complication and prolongation of the sentencing process, as a result of considering an order of restitution under this subsection, substantially outweighs the need to provide restitution to the victim.

Section 2. Section **76-3-203.1** is amended to read:

**76-3-203.1. Offenses committed in concert with two or more persons -- Notice -- Enhanced penalties.**

(1) (a) A person who commits any offense listed in Subsection (4) is subject to an enhanced penalty for the offense as provided in Subsection (3) if the trier of fact finds beyond a reasonable doubt that the person acted in concert with two or more persons.

(b) "In concert with two or more persons" as used in this section means the defendant was aided or encouraged by at least two other persons in committing the offense and was aware that he was so aided or encouraged, and each of the other persons:

- (i) was physically present; or
- (ii) participated as a party to any offense listed in Subsection (4).
- (c) For purposes of Subsection (1)(b)(ii):

- (i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and
- (ii) a minor is a party if the minor's actions would cause him to be a party if he were an adult.

(2) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

(3) The enhanced penalty for a:

- (a) class B misdemeanor is a class A misdemeanor;
- (b) class A misdemeanor is a third degree felony;
- (c) third degree felony is a second degree felony;
- (d) second degree felony is a first degree felony; and

- (e) first degree felony is an ~~enhanced minimum~~ indeterminate prison term of not less than nine years ~~[in prison; and]~~ and which may be for life.

~~[(f) capital offense for which a life sentence is imposed is a minimum term of 20 years in prison.]~~

(4) Offenses referred to in Subsection (1) are:

- (a) any criminal violation of Title 58, Chapter 37, 37a, 37b, or 37c, regarding drug-related offenses;

- (b) assault and related offenses under Title 76, Chapter 5, Part 1;
- (c) any criminal homicide offense under Title 76, Chapter 5, Part 2;
- (d) kidnapping and related offenses under Title 76, Chapter 5, Part 3;
- (e) any felony sexual offense under Title 76, Chapter 5, Part 4;

- (f) sexual exploitation of a minor as defined in Section 76-5a-3;
- (g) any property destruction offense under Title 76, Chapter 6, Part 1;
- (h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2;
- (i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3;
- (j) theft and related offenses under Title 76, Chapter 6, Part 4;
- (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-503, 76-6-504, 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;
- (l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;
- (m) tampering with a witness or other violation of Section 76-8-508;
- (n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;
- (o) any explosives offense under Title 76, Chapter 10, Part 3;
- (p) any weapons offense under Title 76, Chapter 10, Part 5;
- (q) pornographic and harmful materials and performances offenses under Title 76, Chapter 10, Part 12;
- (r) prostitution and related offenses under Title 76, Chapter 10, Part 13;
- (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
- (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- (u) communications fraud as defined in Section 76-10-1801;
- (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; and
- (w) burglary of a research facility as defined in Section 76-10-2002.

(5) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different or lesser offense.

Section 3. Section **76-3-203.6** is enacted to read:

**76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.**

(1) As used in this section, "serving a sentence" means a prisoner is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner:

- (a) has not been paroled; or
- (b) is in custody after arrest for a parole violation.

(2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence for a capital felony or a first degree felony commits any offense listed in Subsection (3), the court shall sentence the defendant to life in prison without parole. However, the court may sentence the defendant to an indeterminate prison term of not less than 20 years and which may be for life if the court finds that the interests of justice would best be served and states the specific circumstances justifying the disposition on the record.

(3) Offenses referred to in Subsection (2) are:

- (a) aggravated assault, Subsection 76-5-103(2);
- (b) mayhem, Section 76-5-105;
- (c) attempted murder, Section 76-5-203;
- (d) kidnapping, Section 76-5-301;
- (e) child kidnapping, Section 76-5-301.1;
- (f) aggravated kidnapping, Section 76-5-302;
- (g) rape, Section 76-5-402;
- (h) rape of a child, Section 76-5-402.1;
- (i) object rape, Section 76-5-402.2;
- (j) object rape of a child, Section 76-5-402.3;
- (k) forcible sodomy, Section 76-5-403;
- (l) sodomy on a child, Section 76-5-403.1;
- (m) aggravated sexual abuse of a child, Section 76-5-404.1;
- (n) aggravated sexual assault, Section 76-5-405;
- (o) aggravated arson, Section 76-6-103;
- (p) aggravated burglary, Section 76-6-203; and

(q) aggravated robbery, Section 76-6-302.

Section 4. Section **76-3-206** is amended to read:

**76-3-206. Capital felony -- Penalties.**

(1) A person who has pled guilty to or been convicted of a capital felony shall be sentenced in accordance with Section 76-3-207. That sentence shall be death, [~~life imprisonment~~] an indeterminate prison term of not less than 20 years and which may be for life, or, on or after April 27, 1992, life in prison without parole.

(2) (a) The judgment of conviction and sentence of death [~~shall be~~] is subject to automatic review by the Utah State Supreme Court within 60 days after certification by the sentencing court of the entire record unless time is extended an additional period not to exceed 30 days by the Utah State Supreme Court for good cause shown. [~~Such~~]

(b) The review by the Utah State Supreme Court [~~shall have~~] has priority over all other cases and shall be heard in accordance with rules promulgated by the Utah State Supreme Court.

Section 5. Section **76-3-207** is amended to read:

**76-3-207. Capital felony -- Sentencing proceeding.**

(1) (a) When a defendant has pled guilty to or been found guilty of a capital felony, there shall be further proceedings before the court or jury on the issue of sentence.

(b) In the case of a plea of guilty to a capital felony, the sentencing proceedings shall be conducted before a jury or, upon request of the defendant and with the approval of the court and the consent of the prosecution, by the court which accepted the plea.

(c) (i) When a defendant has been found guilty of a capital felony, the proceedings shall be conducted before the court or jury which found the defendant guilty, provided the defendant may waive hearing before the jury with the approval of the court and the consent of the prosecution, in which event the hearing shall be before the court.

(ii) If, however, circumstances make it impossible or impractical to reconvene the same jury for the sentencing proceedings, the court may dismiss that jury and convene a new jury for the proceedings.

(d) If a retrial of the sentencing proceedings is necessary as a consequence of a remand from

an appellate court, the sentencing authority shall be determined as provided in Subsection (5).

(2) (a) In capital sentencing proceedings, evidence may be presented on:

(i) the nature and circumstances of the crime;

(ii) the defendant's character, background, history, mental and physical condition;

(iii) the victim and the impact of the crime on the victim's family and community without comparison to other persons or victims; and

(iv) any other facts in aggravation or mitigation of the penalty that the court considers relevant to the sentence.

(b) Any evidence the court considers to have probative force may be received regardless of its admissibility under the exclusionary rules of evidence. The state's attorney and the defendant shall be permitted to present argument for or against the sentence of death.

(3) Aggravating circumstances include those outlined in Section 76-5-202. Mitigating circumstances include:

(a) the defendant has no significant history of prior criminal activity;

(b) the homicide was committed while the defendant was under the influence of mental or emotional disturbance;

(c) the defendant acted under duress or under the domination of another person;

(d) at the time of the homicide, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired as a result of mental disease, intoxication, or influence of drugs;

(e) the youth of the defendant at the time of the crime;

(f) the defendant was an accomplice in the homicide committed by another person and the defendant's participation was relatively minor; and

(g) any other fact in mitigation of the penalty.

(4) (a) The court or jury, as the case may be, shall retire to consider the penalty. Except as provided in Subsection 76-3-207.5(2), in all proceedings before a jury, under this section, it shall be instructed as to the punishment to be imposed upon a unanimous decision for death and that the penalty of either ~~[life in prison]~~ an indeterminate prison term of not less than 20 years and which

may be for life or life in prison without parole, shall be imposed if a unanimous decision for death is not found.

(b) The death penalty shall only be imposed if, after considering the totality of the aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable doubt, that the imposition of the death penalty is justified and appropriate in the circumstances. If the jury reports unanimous agreement to impose the sentence of death, the court shall discharge the jury and shall impose the sentence of death.

(c) If the jury is unable to reach a unanimous decision imposing the sentence of death[; ~~except as provided in Subsection 76-3-207.5(2)~~] or the state is not seeking the death penalty, the jury shall then determine whether the penalty of life in prison without parole shall be imposed, except as provided in Subsection 76-3-207.5(2). The penalty of life in prison without parole shall only be imposed if the jury determines that the sentence of life in prison without parole is appropriate. If the jury reports agreement by ten jurors or more to impose the sentence of life in prison without parole, the court shall discharge the jury and shall impose the sentence of life in prison without parole. If ten jurors or more do not agree upon a sentence of life in prison without parole, the court shall discharge the jury and impose [~~the sentence of life imprisonment with the possibility of parole~~] an indeterminate prison term of not less than 20 years and which may be for life.

(d) If the defendant waives hearing before the jury as to sentencing, with the approval of the court and the consent of the prosecution, the court shall determine the appropriate penalty according to the standards of this Subsection (4)(d).

(5) Upon any appeal by the defendant where the sentence is of death, the appellate court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of death and remand the case to the trial court for new sentencing proceedings to the extent necessary to correct the error or errors. No error in the sentencing proceedings shall result in the reversal of the conviction of a capital felony. In cases of remand for new sentencing proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing proceedings shall be admissible in the new sentencing proceedings, and if the sentencing proceeding

was before a:

(a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution, in which case the proceeding shall be held according to Subsection (5)(b) or (c), as applicable;

(b) judge, the original trial judge shall conduct the new sentencing proceeding; or

(c) judge, and the original trial judge is unable or unavailable to conduct a new sentencing proceeding, then another judge shall be designated to conduct the new sentencing proceeding, and the new proceeding will be before a jury unless the defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution.

(6) In the event the death penalty is held to be unconstitutional by the Utah Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause the person to be brought before the court, and the court shall sentence the person to ~~[life in prison]~~ an indeterminate prison term of not less than 20 years and which may be for life, if the death penalty is held unconstitutional prior to April 27, 1992, or life in prison without parole if the death penalty is held unconstitutional on or after April 27, 1992, and any person who is thereafter convicted of a capital felony shall be sentenced to ~~[life in prison]~~ an indeterminate prison term of not less than 20 years and which may be for life or life in prison without parole.

Section 6. Section **76-3-207.5** is amended to read:

**76-3-207.5. Applicability -- Effect on sentencing -- Options of offenders.**

(1) (a) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 applies only to those capital ~~[offenses]~~ felonies for which the offender is sentenced on or after April 27, 1992.

(b) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 has no effect on sentences imposed in capital cases prior to April 27, 1992.

(2) An offender, who commits a capital ~~[offense]~~ felony prior to April 27, 1992, but is sentenced on or after April 27, 1992, shall be given the option, prior to a sentencing hearing pursuant

to Section 76-3-207, to proceed either under the law which was in effect at the time the offense was committed or under the additional sentencing option of life in prison without parole provided in Sections 76-3-201 and 76-3-207.

Section 7. Section **76-4-201** is amended to read:

**76-4-201. Conspiracy -- Elements of offense.**

For purposes of this part a person is guilty of conspiracy when he, intending that conduct constituting a crime be performed, agrees with one or more persons to engage in or cause the performance of ~~[such]~~ the conduct and any one of them commits an overt act in pursuance of the conspiracy, except where the offense is a capital ~~[offense]~~ felony, a felony against the person, arson, burglary, or robbery, the overt act is not required for the commission of conspiracy.

Section 8. Section **76-5-103.5** is amended to read:

**76-5-103.5. Aggravated assault by prisoner.**

(1) Any prisoner, not serving a sentence for a capital felony or a felony of the first degree, who commits aggravated assault is guilty of:

- (a) a felony of the second degree if no serious bodily injury was intentionally caused; or
- (b) a felony of the first degree if serious bodily injury was intentionally caused.

~~[(2) Any prisoner serving a sentence for a capital felony or a felony of the first degree who commits aggravated assault is guilty of:]~~

~~[(a) a felony of the first degree if no serious bodily injury was intentionally caused; or]~~

~~[(b) a capital felony if serious bodily injury was intentionally caused.]~~

~~[(3)]~~ (2) For the purpose of this section, "serving a sentence" means sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner is:

- (a) not on parole; or
- (b) in custody after arrest for a parole violation.

Section 9. 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;
- (d) the homicide was committed while the actor was engaged in the commission of, or an attempt to commit, or flight after committing or attempting 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, child abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated ~~[kidnaping]~~ kidnapping, ~~[kidnaping]~~ kidnapping, or child ~~[kidnaping]~~ kidnapping;
- (e) the homicide was committed for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant's or another's escape from lawful custody;
- (f) the homicide was committed for pecuniary or other personal gain;
- (g) the defendant committed, or engaged or employed another person to commit the homicide pursuant to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;
- (h) the actor was previously convicted of ~~[aggravated murder, murder, or of a felony involving the use or threat of violence to a person. For the purpose of this subsection an offense committed in another jurisdiction, which if committed in Utah would be punishable as aggravated murder or murder, is considered aggravated murder or murder;]~~;
  - (i) aggravated murder, Section 76-5-202;
  - (ii) murder, Section 76-5-203;

- (iii) aggravated assault, Subsection 76-5-103(2);
- (iv) mayhem, Section 76-5-105;
- (v) attempted murder, Section 76-5-203;
- (vi) kidnapping, Section 76-5-301;
- (vii) child kidnapping, Section 76-5-301.1;
- (viii) aggravated kidnapping, Section 76-5-302;
- (ix) rape, Section 76-5-402;
- (x) rape of a child, Section 76-5-402.1;
- (xi) object rape, Section 76-5-402.2;
- (xii) object rape of a child, Section 76-5-402.3;
- (xiii) forcible sodomy, Section 76-5-403;
- (xiv) sodomy on a child, Section 76-5-403.1;
- (xv) aggravated sexual abuse of a child, Section 76-5-404.1;
- (xvi) aggravated sexual assault, Section 76-5-405;
- (xvii) aggravated arson, Section 76-6-103;
- (xviii) aggravated burglary, Section 76-6-203;
- (xix) aggravated robbery, Section 76-6-302; or
- (xx) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in Subsection (1)(h);
  - (i) the homicide was committed for the purpose of:
    - (i) preventing a witness from testifying;
    - (ii) preventing a person from providing evidence or participating in any legal proceedings or official investigation;
    - (iii) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or
    - (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
  - (j) the victim is or has been 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;

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

(l) the homicide was committed 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;

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

(n) the homicide was committed 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;

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

or

~~[(p) the actor was under a sentence of life imprisonment or a sentence of death at the time of the commission of the homicide; or]~~

~~[(q)]~~ (p) the homicide was committed 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 victim before death.

(2) Aggravated murder is a capital ~~[offense]~~ felony.

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

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

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

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

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

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

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

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

(i) aggravated murder to murder; and

(ii) attempted aggravated murder to attempted murder.

Section 10. Section **76-8-306** is amended to read:

**76-8-306. Obstructing justice -- Penalties.**

(1) A person is guilty of an offense if, with intent to hinder, prevent, or delay the discovery, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he:

(a) knowing an offense has been committed, conceals it from a magistrate;

(b) harbors or conceals the offender;

(c) provides the offender a weapon;

(d) provides the offender transportation, disguise, or other means for avoiding discovery or apprehension;

(e) warns the offender of impending discovery or apprehension;

(f) conceals, destroys, or alters any physical evidence that might aid in the discovery, apprehension, or conviction of the offender;

(g) obstructs by force, intimidation, or deception anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of the offender; or

(h) having knowledge that a law enforcement officer has been authorized or has applied for authorization under either Section 77-23a-10 or 77-23a-15 to intercept a wire, electronic, or oral

communication, gives notice or attempts to give notice of the possible interception to any person.

(2) Except as provided under Subsection (3), an offense under:

(a) Subsection (1)(a) or Subsections (1)(d) through (g) is a class B misdemeanor;

(b) Subsection (1)(b) regarding harboring or concealing the offender is a class A misdemeanor, except as provided in Subsection (6); and

(c) Subsection (1)(c) regarding providing a weapon is a third degree felony.

(3) (a) If the person committing an offense under Subsection (1)(a) or Subsections (1)(d) through (g) knows that the offender has committed a second or third degree felony, the offense is a class A misdemeanor.

(b) If the person committing an offense under Subsection (1)(b) regarding harboring or concealing the offender knows the offender has committed a second or third degree felony, the offense is a third degree felony.

(c) If the person committing an offense under Subsection (1)(c) regarding providing a weapon knows the offender has committed a second or third degree felony, the offense is a second degree felony.

(d) If the person committing an offense under Subsections (1)(a) through (g) knows the offender has committed a capital [~~offense~~] felony or a felony of the first degree, the offense is a second degree felony.

(4) An offense under Subsection (1)(h) is a third degree felony.

(5) Subsection (1)(f) does not apply to an act against a juror. Obstructing the function of a juror is addressed in Section 76-8-508.5.

(6) A person is guilty of a third degree felony who:

(a) harbors or conceals an offender who has absconded from a facility or from supervision as these offenses are defined in Section 76-8-309.5; or

(b) has escaped from official custody as defined in Section 76-8-309.

(7) The provisions of Section 76-8-316 govern an act or threat against a judge or a member of the Board of Pardons and Parole or the judge's or member's immediate family.

Section 11. Section **76-8-316** is amended to read:

**76-8-316. Influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole.**

(1) A person is guilty of a third degree felony if the person threatens to assault, kidnap, or murder a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the intent to retaliate against the judge or member on account of the performance of those official duties.

(2) A person is guilty of a second degree felony if the person commits an assault on a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties, or with the intent to retaliate against the judge or member on account of the performance of those official duties.

(3) A person is guilty of a first degree felony if the person commits aggravated assault or attempted murder on a judge or a member of the Board of Pardons and Parole with the purpose to impede, intimidate, or interfere with the judge or member of the board while engaged in the performance of the judge's or member's official duties or with the purpose to retaliate against the judge or member on account of the performance of those official duties.

(4) As used in this section:

(a) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the officer.

(b) "Judge" means judges of all courts of record and courts not of record.

(c) "Judge or member" includes the members of the judge's or member's immediate family.

(d) "Member of the Board of Pardons and Parole" means appointed members of the board.

(5) A member of the Board of Pardons and Parole is an executive officer for purposes of [Subsections] Subsection 76-5-202(1)(k).

Section 12. Section **77-16a-201** is amended to read:

**77-16a-201. Probation.**

(1) (a) When the court proposes to place on probation a defendant who has pled or is found

guilty and mentally ill, it shall request UDC to provide a presentence investigation report regarding whether probation is appropriate for that defendant and, if so, recommending a specific treatment program. If the defendant is placed on probation, that treatment program shall be made a condition of probation, and the defendant shall remain under the jurisdiction of the sentencing court.

(b) The court may not place a mentally ill offender who has been convicted of a capital [~~offense~~] felony on probation.

(2) The period of probation may be for no less than five years, or until the expiration of the defendant's sentence, whichever occurs first. Probation may not be subsequently reduced by the sentencing court without consideration of an updated report on the mental health status of the defendant.

(3) (a) Treatment ordered by the court under this section may be provided by or under contract with the department, a mental health facility, a local mental health authority, or, with the approval of the sentencing court, any other public or private mental health provider.

(b) The entity providing treatment under this section shall file a report with the defendant's probation officer at least every six months during the term of probation.

(c) Any request for termination of probation regarding a defendant who is receiving treatment under this section shall include a current mental health report prepared by the treatment provider.

(4) Failure to continue treatment or any other condition of probation, except by agreement with the entity providing treatment and the sentencing court, is a basis for initiating probation violation hearings.

(5) The court may not release a mentally ill offender into the community, as a part of probation, if it finds by clear and convincing evidence that he:

(a) poses an immediate physical danger to himself or others, including jeopardizing his own or others' safety, health, or welfare if released into the community; or

(b) lacks the ability to provide the basic necessities of life, such as food, clothing, and shelter, if released into the community.

(6) A mentally ill offender who is not eligible for release into the community under the

provisions of Subsection (5) may be placed by the court, on probation, in an appropriate mental health facility.

Section 13. Section **77-16a-202** is amended to read:

**77-16a-202. Person found guilty and mentally ill -- Commitment to department -- Admission to Utah State Hospital.**

(1) In sentencing and committing a mentally ill offender to the department under Subsection 77-16a-104(3)(a), the court shall:

(a) sentence the offender to a term of imprisonment and order that he be committed to the department and admitted to the Utah State Hospital for care and treatment until transferred to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for readmission to the Utah State Hospital whenever the requirements and conditions of Section 77-16a-204 are met; or

(b) sentence the offender to a term of imprisonment and order that he be committed to the department for care and treatment for no more than 18 months, or until the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital is no longer necessary to ensure adequate mental health treatment, whichever occurs first. At the expiration of that time, the court may recall the sentence and commitment, and resentence the offender. A commitment and retention of jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that specification is not included in the sentencing order, the offender shall be committed in accordance with Subsection (1)(a).

(2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of a mentally ill offender who has been convicted of a capital ~~[offense]~~ felony. In capital cases, the court shall make the findings required by this section after the capital sentencing proceeding mandated by Section 76-3-207.

(3) When an offender is committed to the department and admitted to the Utah State Hospital under Subsection (1)(b), the department shall provide the court with reports of the offender's mental health status every six months. Those reports shall be prepared in accordance with the requirements of Section 77-16a-203. Additionally, the court may appoint an independent examiner to assess the mental health status of the offender.

(4) The period of commitment to the department and admission to the Utah State Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of that sentence, the administrator of the facility where the offender is located may initiate civil proceedings for involuntary commitment in accordance with Title 62A, Chapter 12 or Title 62A, Chapter 5.

Section 14. Section **77-18-5.5** is amended to read:

**77-18-5.5. Judgment of death -- Defendant to select method -- Time of selection.**

When a person is convicted of a capital [~~offense~~] felony and the judgment of death has been imposed, the defendant is entitled to select, at the time of sentencing, either a firing squad or a lethal intravenous injection as the method of execution. If the defendant does not indicate a preference at that time to the court, the judgment of death shall be executed by lethal intravenous injection.

Section 15. Section **77-20-1** is amended to read:

**77-20-1. Right to bail -- Denial of bail -- Hearing.**

(1) A person charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the person is charged with a:

(a) capital [~~offense~~] felony, when the court finds there is substantial evidence to support the charge;

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person or to the community, or is likely to flee the jurisdiction of the court, if released on bail; or

(d) felony when the court finds there is substantial evidence to support the charge and it finds by clear and convincing evidence that the person violated a material condition of release while previously on bail.

(2) Any person who may be admitted to bail may be released either on his own recognizance or upon posting bail, on condition that he appear in court for future court proceedings in the case,

and on any other conditions imposed in the discretion of the magistrate or court that will reasonably:

- (a) ensure the appearance of the accused;
- (b) ensure the integrity of the court process;
- (c) prevent direct or indirect contact with witnesses or victims by the accused, if appropriate;

and

- (d) ensure the safety of the public.

(3) The initial order denying or fixing the amount of bail shall be issued by the magistrate or court issuing the warrant of arrest or by the magistrate or court presiding over the accused's first judicial appearance. The magistrate or court may rely upon information contained in:

- (a) the indictment or information;
- (b) any sworn probable cause statement;
- (c) information provided by any pretrial services agency; or
- (d) any other reliable record or source.

(4) A motion to modify the initial order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit any victim to be notified and be present. Hearing on a motion to modify may be held in conjunction with a preliminary hearing or any other pretrial hearing. The magistrate or court may rely on information as provided in Subsections (3)(a) through (d) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to present additional evidence or information relevant to bail.

(5) Subsequent motions to modify bail orders may be made only upon a showing that there has been a material change in circumstances.

(6) An appeal may be taken from an order of any court denying bail to the Supreme Court, which shall review the determination under Subsection (1).

Section 16. Section **77-32-201** is amended to read:

**77-32-201. Definitions.**

For the purposes of this chapter:

- (1) "Board" means the Indigent Defense Funds Board created in Section 77-32-401.

(2) "Indigent" means a person qualifying as an indigent under indigency standards established in Part 3, Counsel for Indigents.

(3) "Participating county" means a county which has complied with the provisions of this chapter for participation in the Indigent Capital Defense Trust Fund as provided in Sections 77-32-602 and 77-32-603 or the Indigent Felony Defense Trust Fund as provided in Sections 77-32-702 and 77-32-703.

(4) "Serious offense" means a felony or capital ~~[offense]~~ felony.

Section 17. Section **77-32-601** is amended to read:

**77-32-601. Establishment of Indigent Capital Defense Trust Fund -- Use of fund -- Compensation for indigent legal defense from fund.**

(1) For purposes of this part, "fund" means the Indigent Capital Defense Trust Fund.

(2) There is established an expendable trust fund known as the Indigent Capital Defense Trust Fund which shall be nonlapsing and shall be disbursed by the Division of Finance at the direction of the board and subject to the provisions of this chapter.

(3) The fund consists of:

(a) monies received from participating counties as provided in Sections 77-32-602 and 77-32-603;

(b) appropriations made to the fund by the Legislature as provided in Section 77-32-603; and

(c) interest and earnings from the investment of fund monies.

(4) Fund monies shall be invested by the state treasurer with the earnings and interest accruing to the fund.

(5) The fund shall be used to assist participating counties with financial resources, as provided in Subsection (6), to fulfill their constitutional and statutory mandates for the provision of an adequate defense for indigents prosecuted for the violation of state laws in cases involving capital ~~[offenses]~~ felonies.

(6) Monies allocated to or deposited in this fund shall be used only:

(a) to reimburse participating counties for expenditures made for an attorney appointed to represent an indigent, other than a state inmate in a state prison, prosecuted for a capital ~~[offense]~~

felony in a participating county; and

(b) for administrative costs pursuant to Section 77-32-401.

Section 18. Section **77-32-604** is amended to read:

**77-32-604. Application and qualification for fund money.**

(1) Any participating county may apply to the board for benefits from the fund if that county has incurred, or reasonably anticipates incurring, expenses in the defense of an indigent for capital [~~offenses~~] felonies in violation of state law arising out of a single criminal episode.

(2) No application shall be made nor benefits provided from the fund for cases filed before September 1, 1998.

(3) If the application of a participating county is approved by the board, the board shall negotiate, enter into, and administer a contract with counsel for the indigent and costs incurred for the defense of that indigent, including fees for counsel and reimbursement for defense costs incurred by defense counsel.

(4) Nonparticipating counties are responsible for paying indigent costs in their county and shall not be eligible for any legislative relief. However, nonparticipating counties may provide for payment of indigent costs through an increase in the county tax levy as provided in Section 77-32-307.

(5) This part may not become effective unless the board has received resolutions before August 1, 1998, from at least 15 counties adopted as described in Subsection 77-32-602(2).

Section 19. Section **78-46-5** is amended to read:

**78-46-5. Trial by jury.**

(1) A trial jury [~~shall consist~~] consists of:

(a) twelve persons in a capital case;

(b) eight persons in a criminal case which carries a term of incarceration of more than one year as a possible sentence for the most serious offense charged;

(c) six persons in a criminal case which carries a term of incarceration of more than six months but not more than one year as a possible sentence for the most serious offense charged;

(d) four persons in a criminal case which carries a term of incarceration of six months or less

as a possible sentence for the most serious offense charged; and

(e) eight persons in a civil case at law except that the jury shall be four persons in a civil case for damages of less than \$20,000, exclusive of costs, interest, and attorney fees.

(2) Except in the trial of a capital [~~offense~~] felony, the parties may stipulate upon the record to a jury of a lesser number than established by this section.

(3) (a) The verdict in a criminal case shall be unanimous.

(b) The verdict in a civil case shall be by not less than three-fourths of the jurors.

(4) There is no jury in the trial of small claims cases.

(5) There is no jury in the adjudication of a minor charged with what would constitute a crime if committed by an adult.