

**FELONY MURDER AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Karen W. Morgan**

**This act modifies the Criminal Code regarding proof of intent when an offender commits a specified felony, and in the process another person is killed. This act clarifies existing law stating that in order to prove the murder offense, the prosecution must prove the intent to commit the specified felony, not intent to commit murder.**

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

AMENDS:

**76-5-203**, as last amended by Chapters 101 and 125, Laws of Utah 2000

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

Section 1. Section **76-5-203** is amended to read:

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

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

- (a) a violation of Section 58-37d-4 or 58-37d-5, Clandestine Drug Lab Act;
- (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; or
  - (u) escape or aggravated escape under Section 76-8-309.
- (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 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; ~~and~~
  - (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 while in the commission or attempted commission of:
    - (i) an assault against a peace officer under Section 76-5-102.4; or
    - (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;

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

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

(3) Murder is a first degree felony.

(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:

(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 (4)(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 (4)(a)(i) or the reasonable belief of the actor under Subsection (4)(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) murder to manslaughter; and

(ii) attempted murder to attempted manslaughter.