

AGGRAVATED MURDER AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott L Wyatt

Senate Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill amends the Criminal Code regarding the elements of aggravated murder, a capital felony, to include cases when the defendant abuses or desecrates the body of the murder victim. The bill provides that a murder is aggravated murder if the defendant has previously committed murder or attempted murder. The bill also amends the definition of abuse or desecration of a dead human body.

Highlighted Provisions:

This bill:

- ▶ provides that a murder is aggravated murder if the murder was committed during a criminal episode in which the defendant abused or desecrated the body of the dead victim;
- ▶ provides that a murder is aggravated murder if the defendant had previously committed or been convicted of aggravated murder, attempted aggravated murder, murder, attempted murder, or any offense in another state that would be one of these listed offenses if committed in Utah;
- ▶ amends current Utah law, which requires a conviction of the above offenses in order for the murder to be aggravated murder, to also include commission of the above offenses;
- ▶ provides that a murder is aggravated murder if the defendant dismembers, mutilates, or disfigures the victim's body, whether before or after death, indicating the defendant's depravity of mind; and
- ▶ amends the Criminal Code definition of abuse or desecration of a dead human body

regarding sexual abuse of a victim's body.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-202, as last amended by Chapter 166, Laws of Utah 2002

76-9-704, as last amended by Chapter 1, Laws of Utah 2000

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;

(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 kidnapping, kidnapping, or child kidnapping;

(e) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as defined in Subsection 76-9-704(2)(e);

~~(e)~~ (f) 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)~~ (g) the homicide was committed for pecuniary or other personal gain;

~~(g)~~ (h) 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;

(i) the actor previously committed or was convicted of:

(i) aggravated murder, Section 76-5-202;

(ii) attempted aggravated murder, Section 76-5-202;

(iii) murder, Section 76-5-203;

(iv) attempted murder, Section 76-5-203; or

(v) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(i);

~~(h)~~ (j) the actor was previously convicted of:

~~(i) aggravated murder, Section 76-5-202;~~

~~(ii) murder, Section 76-5-203;~~

~~(iii)~~ (i) aggravated assault, Subsection 76-5-103(2);

~~(iv)~~ (ii) mayhem, Section 76-5-105;

~~(v) attempted murder, Section 76-5-203;~~

~~(vi)~~ (iii) kidnapping, Section 76-5-301;

~~(vii)~~ (iv) child kidnapping, Section 76-5-301.1;

~~(viii)~~ (v) aggravated kidnapping, Section 76-5-302;

~~(ix)~~ (vi) rape, Section 76-5-402;

~~(x)~~ (vii) rape of a child, Section 76-5-402.1;

~~[(xi)]~~ (viii) object rape, Section 76-5-402.2;

~~[(xii)]~~ (ix) object rape of a child, Section 76-5-402.3;

~~[(xiii)]~~ (x) forcible sodomy, Section 76-5-403;

~~[(xiv)]~~ (xi) sodomy on a child, Section 76-5-403.1;

~~[(xv)]~~ (xii) aggravated sexual abuse of a child, Section 76-5-404.1;

~~[(xvi)]~~ (xiii) aggravated sexual assault, Section 76-5-405;

~~[(xvii)]~~ (xiv) aggravated arson, Section 76-6-103;

~~[(xviii)]~~ (xv) aggravated burglary, Section 76-6-203;

~~[(xix)]~~ (xvi) aggravated robbery, Section 76-6-302; or

~~[(xx)]~~ (xvii) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)~~[(h)]~~(j);

~~[(i)]~~ (k) 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)]~~ (l) 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)]~~ (m) 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)]~~ (n) the homicide was committed:

(i) 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; or

(ii) by means of any weapon of mass destruction as defined in Section 76-10-401;

~~[(m)]~~ (o) 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)]~~ (p) 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)]~~ (q) the victim was a person held or otherwise detained as a shield, hostage, or for ransom; ~~[(or)]~~

~~[(p)]~~ (r) 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~~[-];~~ or

(s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or after death, in a manner demonstrating the actor's depravity of mind.

(2) Aggravated murder is a capital 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 2. Section **76-9-704** is amended to read:

76-9-704. Abuse or desecration of a dead human body -- Penalties.

(1) For purposes of this section, "dead human body" includes any part of a human body in any stage of decomposition, including ancient human remains.

(2) A person is guilty of abuse or desecration of a dead human body if the person intentionally and unlawfully:

(a) fails to report the finding of a dead human body to a local law enforcement agency;

(b) disturbs, moves, removes, conceals, or destroys a dead human body or any part of it;

(c) disinters a buried or otherwise interred dead human body, without authority of a court order;

(d) dismembers a dead human body to any extent, or damages or detaches any part or portion of a dead human body; or

(e) (i) commits[;] or attempts to commit upon any dead human body any act of sexual penetration [or intercourse, object rape, sodomy, or object sodomy, as these acts are described in Chapter 5, Offenses Against the Person.], regardless of the sex of the actor and of the dead human body; and

(ii) as used in Subsection (2)(e)(i), "sexual penetration" means penetration, however slight, of the genital or anal opening by any object, substance, instrument, or device, including a part of the human body, or penetration involving the genitals of the actor and the mouth of the dead human body.

(3) A person does not violate this section if when that person directs or carries out

procedures regarding a dead human body, that person complies with:

- (a) Title 9, Chapter 8, Part 3, Antiquities;
- (b) Title 26, Chapter 4, Utah Medical Examiner Act;
- (c) Title 26, Chapter 28, Uniform Anatomical Gift Act;
- (d) Title 53B, Chapter 17, Part 3, Use of Dead Bodies for Medical Purposes;
- (e) Title 58, Chapter 9, Funeral Services Licensing Act; or
- (f) Title 58, Chapter 67, Utah Medical Practice Act, which concerns licensing to practice

medicine.

(4) (a) Failure to report the finding of a dead human body as required under Subsection (2)(a) is a class B misdemeanor.

(b) Abuse or desecration of a dead human body as described in Subsections (2)(b) through (e) is a third degree felony.