

CAPITAL OFFENSES AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: D. Chris Buttars

Cosponsor: Carl Wimmer

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding the elements of aggravated murder as related to the homicide of a child.

Highlighted Provisions:

This bill:

► provides that the commission or attempt to commit specified offenses, including sexual offenses, against a child as a part of the commission of the homicide constitutes aggravated murder, ~~H→ [whether or not the specified offenses were committed intentionally or knowingly] if committed with reckless indifference to~~

human life [-] ;

► modifies an element of aggravated murder regarding acting for pecuniary gain; and

► modifies an element of murder to specify "knowing" as the level of intent when the defendant acts with depraved indifference. ←H

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-202, as last amended by Chapter 191, Laws of Utah 2006

76-5-203, as last amended by Chapter 348, Laws of Utah 2006

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

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

29 **76-5-202. Aggravated murder.**

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

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

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

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

39 (d) the homicide was committed incident to an act, scheme, course of conduct, or
40 criminal episode during which the actor committed or attempted to commit aggravated robbery,
41 robbery, rape, ~~H→~~ [f] **rape of a child**, [f] ~~←H~~ object rape, ~~H→~~ [f] **object rape of a child**, [f] ~~←H~~
41a forcible sodomy, ~~H→~~ [f] **sodomy**
42 **upon a child**, [f] ~~←H~~ forcible sexual abuse, ~~H→~~ [f] **sexual abuse of a child**, **aggravated sexual**
42a **abuse of a**
43 **child**, **child abuse as defined in Subsection 76-5-109(2)(a)**, [f] ~~←H~~ or aggravated sexual assault,
44 aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping
44a ~~H→~~ [f] ,
45 **or child kidnapping** [f] ~~←H~~ ;

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

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

52 (g) the homicide was committed for pecuniary ~~H→~~ [~~or other personal~~] ~~←H~~ gain;

53 (h) the defendant committed, or engaged or employed another person to commit the
54 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration
55 for commission of the homicide;

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

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

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

- 59 (iii) murder, Section 76-5-203;
- 60 (iv) attempted murder, Section 76-5-203; or
- 61 (v) an offense committed in another jurisdiction which if committed in this state would
- 62 be a violation of a crime listed in this Subsection (1)(i);
- 63 (j) the actor was previously convicted of:
- 64 (i) aggravated assault, Subsection 76-5-103(2);
- 65 (ii) mayhem, Section 76-5-105;
- 66 (iii) kidnapping, Section 76-5-301;
- 67 (iv) child kidnapping, Section 76-5-301.1;
- 68 (v) aggravated kidnapping, Section 76-5-302;
- 69 (vi) rape, Section 76-5-402;
- 70 (vii) rape of a child, Section 76-5-402.1;
- 71 (viii) object rape, Section 76-5-402.2;
- 72 (ix) object rape of a child, Section 76-5-402.3;
- 73 (x) forcible sodomy, Section 76-5-403;
- 74 (xi) sodomy on a child, Section 76-5-403.1;
- 75 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 76 (xiii) aggravated sexual assault, Section 76-5-405;
- 77 (xiv) aggravated arson, Section 76-6-103;
- 78 (xv) aggravated burglary, Section 76-6-203;
- 79 (xvi) aggravated robbery, Section 76-6-302; or
- 80 (xvii) an offense committed in another jurisdiction which if committed in this state
- 81 would be a violation of a crime listed in this Subsection (1)(j);
- 82 (k) the homicide was committed for the purpose of:
- 83 (i) preventing a witness from testifying;
- 84 (ii) preventing a person from providing evidence or participating in any legal
- 85 proceedings or official investigation;
- 86 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 87 any legal proceedings or official investigation; or
- 88 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 89 (l) the victim is or has been a local, state, or federal public official, or a candidate for

90 public office, and the homicide is based on, is caused by, or is related to that official position,
 91 act, capacity, or candidacy;

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

97 (n) the homicide was committed:

98 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
 99 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
 100 structure, or was mailed or delivered; or

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

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

107 (p) the homicide was committed by means of the administration of a poison or of any
 108 lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

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

111 (r) the homicide was committed in an especially heinous, atrocious, cruel, or
 112 exceptionally depraved manner, any of which must be demonstrated by physical torture, serious
 113 physical abuse, or serious bodily injury of the victim before death; or

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

116 (2) Criminal homicide constitutes aggravated murder if the actor ~~H→~~, with reckless
 116a indifference to human life, ~~←H~~ causes the death of
 117 another incident to an act, scheme, course of conduct, or criminal episode during which the
 118 actor ~~H→~~ [committed or attempted to commit] is a major participant in the commission or
 118a attempted commission of ~~←H~~ :

119 (a) child abuse, Subsection 76-5-109(2)(a) ~~H→~~ [or (b)] ~~←H~~ ;

120 (b) child kidnapping, Section 76-5-301.1;

121 (c) rape of a child, Section 76-5-402.1;
 122 (d) object rape of a child, Section 76-5-402.3;
 123 (e) sodomy on a child, Section 76-5-403.1; or
 124 (f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.
 125 [~~2~~] (3) Aggravated murder is a capital felony.
 126 [~~3~~] (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted
 127 aggravated murder that the defendant caused the death of another or attempted to cause the
 128 death of another:
 129 (i) under the influence of extreme emotional distress for which there is a reasonable
 130 explanation or excuse; or
 131 (ii) under a reasonable belief that the circumstances provided a legal justification or
 132 excuse for his conduct although the conduct was not legally justifiable or excusable under the
 133 existing circumstances.
 134 (b) Under Subsection [~~3~~] (4)(a)(i), emotional distress does not include:
 135 (i) a condition resulting from mental illness as defined in Section 76-2-305; or
 136 (ii) distress that is substantially caused by the defendant's own conduct.
 137 (c) The reasonableness of an explanation or excuse under Subsection [~~3~~] (4)(a)(i) or
 138 the reasonable belief of the actor under Subsection [~~3~~] (4)(a)(ii) shall be determined from the
 139 viewpoint of a reasonable person under the then existing circumstances.
 140 (d) This affirmative defense reduces charges only as follows:
 141 (i) aggravated murder to murder; and
 142 (ii) attempted aggravated murder to attempted murder.
 143 Section 2. Section **76-5-203** is amended to read:
 144 **76-5-203. Murder.**
 145 (1) As used in this section, "predicate offense" means:
 146 (a) a violation of Section 58-37d-4 or 58-37d-5, Clandestine Drug Lab Act;
 147 (b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18
 148 years of age;
 149 (c) kidnapping under Section 76-5-301;
 150 (d) child kidnapping under Section 76-5-301.1;
 151 (e) aggravated kidnapping under Section 76-5-302;

- 152 (f) rape of a child under Section 76-5-402.1;
- 153 (g) object rape of a child under Section 76-5-402.3;
- 154 (h) sodomy upon a child under Section 76-5-403.1;
- 155 (i) forcible sexual abuse under Section 76-5-404;
- 156 (j) sexual abuse of a child or aggravated sexual abuse of a child under Section
- 157 76-5-404.1;
- 158 (k) rape under Section 76-5-402;
- 159 (l) object rape under Section 76-5-402.2;
- 160 (m) forcible sodomy under Section 76-5-403;
- 161 (n) aggravated sexual assault under Section 76-5-405;
- 162 (o) arson under Section 76-6-102;
- 163 (p) aggravated arson under Section 76-6-103;
- 164 (q) burglary under Section 76-6-202;
- 165 (r) aggravated burglary under Section 76-6-203;
- 166 (s) robbery under Section 76-6-301;
- 167 (t) aggravated robbery under Section 76-6-302;
- 168 (u) escape or aggravated escape under Section 76-8-309; or
- 169 (v) a felony violation of Subsection 76-10-508(2) regarding discharge of a firearm or
- 170 dangerous weapon.

- 171 (2) Criminal homicide constitutes murder if:
- 172 (a) the actor intentionally or knowingly causes the death of another;
- 173 (b) intending to cause serious bodily injury to another, the actor commits an act clearly
- 174 dangerous to human life that causes the death of another;

- 175 (c) acting under circumstances evidencing a depraved indifference to human life, the
- 176 actor ~~is~~ **knowingly** ~~engages~~ in conduct which creates a grave risk of death to another
- 176a and thereby causes the
- 177 death of another;

- 178 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
- 179 flight from the commission or attempted commission of any predicate offense, or is a party to
- 180 the predicate offense;

- 181 (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of
- 182 the commission, attempted commission, or immediate flight from the commission or attempted

183 commission of any predicate offense; and
184 (iii) the actor acted with the intent required as an element of the predicate offense;
185 (e) the actor recklessly causes the death of a peace officer while in the commission or
186 attempted commission of:
187 (i) an assault against a peace officer under Section 76-5-102.4; or
188 (ii) interference with a peace officer while making a lawful arrest under Section
189 76-8-305 if the actor uses force against a peace officer;
190 (f) commits a homicide which would be aggravated murder, but the offense is reduced
191 pursuant to Subsection 76-5-202[~~(3)~~] (4); or
192 (g) the actor commits aggravated murder, but special mitigation is established under
193 Section 76-5-205.5.
194 (3) (a) Murder is a first degree felony.
195 (b) A person who is convicted of murder shall be sentenced to imprisonment for an
196 indeterminate term of not less than 15 years and which may be for life.
197 (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the
198 defendant caused the death of another or attempted to cause the death of another:
199 (i) under the influence of extreme emotional distress for which there is a reasonable
200 explanation or excuse; or
201 (ii) under a reasonable belief that the circumstances provided a legal justification or
202 excuse for his conduct although the conduct was not legally justifiable or excusable under the
203 existing circumstances.
204 (b) Under Subsection (4)(a)(i) emotional distress does not include:
205 (i) a condition resulting from mental illness as defined in Section 76-2-305; or
206 (ii) distress that is substantially caused by the defendant's own conduct.
207 (c) The reasonableness of an explanation or excuse under Subsection (4)(a)(i) or the
208 reasonable belief of the actor under Subsection (4)(a)(ii) shall be determined from the
209 viewpoint of a reasonable person under the then existing circumstances.
210 (d) This affirmative defense reduces charges only as follows:
211 (i) murder to manslaughter; and
212 (ii) attempted murder to attempted manslaughter.

Legislative Review Note
as of 1-3-07 10:13 AM

Office of Legislative Research and General Counsel

H.B. 93 - Capital Offenses Amendments - As Amended

**Revised
Fiscal Note**

2007 General Session
State of Utah

State Impact

Enactment of this bill will require additional on-going appropriations of \$8,500 from the General Fund beginning in FY 2008 to the Courts to manage the expected additional judicial workload.

	<u>FY 2007 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>
General Fund	\$0	\$8,500	\$8,500	\$0	\$0	\$0
Total	\$0	\$8,500	\$8,500	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.