

1 **CRIMINAL PENALTIES REVISIONS**

2 2008 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Scott K. Jenkins**

5 House Sponsor: Curtis Oda

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Utah Criminal Code relating to criminal penalties.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ provides that attempt to commit a felony punishable by imprisonment for life
13 without parole is a first degree felony;

14 ▶ provides that a person who is convicted of aggravated murder, based on an
15 aggravating circumstance that also constitutes a separate offense, may also be
16 convicted of, and punished for, the separate offense; ~~§~~→ [and]

16a ▶ **provides that a person who is convicted of murder, based on a predicate offense that**
16b **also constitutes a separate offense, may also be convicted of, and punished for, the separate**
16c **offense; and** ←§

17 ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 ~~§~~→ [None] **This bill provides an immediate effective date.** ←§

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **76-4-102**, as last amended by Laws of Utah 2002, Chapter 57

25 **76-5-202**, as last amended by Laws of Utah 2007, Chapters 275, 340, and 345

25a ~~§~~→ **76-5-203, as last amended by Laws of Utah 2007, Chapter 340**

25b **76-8-316, as last amended by Laws of Utah 2007, Chapter 326** ←§

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



28 Section 1. Section **76-4-102** is amended to read:

29 **76-4-102. Attempt -- Classification of offenses.**

30 Criminal attempt to commit:

31 (1) a capital felony, or a felony punishable by imprisonment for life without parole, is a
32 first degree felony;

33 (2) a first degree felony is a second degree felony, except that an attempt to commit any
34 of the following offenses is a first degree felony punishable by imprisonment for an
35 indeterminate term of not fewer than three years and which may be for life:

36 (a) murder, a violation of Subsection 76-5-203(2)(a), if the victim or another suffers
37 serious bodily injury in the course of the actor's commission of the offense;

38 (b) child kidnapping, a violation of Section 76-5-301.1; or

39 (c) any of the felonies described in Title 76, Chapter 5, Part 4, Sexual Offenses, that are
40 first degree felonies;

41 (3) a second degree felony is a third degree felony;

42 (4) a third degree felony is a class A misdemeanor;

43 (5) a class A misdemeanor is a class B misdemeanor;

44 (6) a class B misdemeanor is a class C misdemeanor; and

45 (7) a class C misdemeanor is punishable by a penalty not exceeding one half the penalty
46 for a class C misdemeanor.

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

48 **76-5-202. Aggravated murder.**

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

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

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

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

58 (d) the homicide was committed incident to an act, scheme, course of conduct, or

59 criminal episode during which the actor committed or attempted to commit aggravated robbery,
60 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon
61 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child
62 abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson,
63 arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child
64 kidnapping;

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

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

71 (g) the homicide was committed for pecuniary gain;

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

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

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

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

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

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

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

82 (j) the actor was previously convicted of:

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

84 (ii) mayhem, Section 76-5-105;

85 (iii) kidnapping, Section 76-5-301;

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

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

88 (vi) rape, Section 76-5-402;

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

- 90 (viii) object rape, Section 76-5-402.2;
- 91 (ix) object rape of a child, Section 76-5-402.3;
- 92 (x) forcible sodomy, Section 76-5-403;
- 93 (xi) sodomy on a child, Section 76-5-403.1;
- 94 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 95 (xiii) aggravated sexual assault, Section 76-5-405;
- 96 (xiv) aggravated arson, Section 76-6-103;
- 97 (xv) aggravated burglary, Section 76-6-203;
- 98 (xvi) aggravated robbery, Section 76-6-302; or
- 99 (xvii) an offense committed in another jurisdiction which if committed in this state
- 100 would be a violation of a crime listed in this Subsection (1)(j);
- 101 (k) the homicide was committed for the purpose of:
- 102 (i) preventing a witness from testifying;
- 103 (ii) preventing a person from providing evidence or participating in any legal
- 104 proceedings or official investigation;
- 105 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 106 any legal proceedings or official investigation; or
- 107 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 108 (l) the victim is or has been a local, state, or federal public official, or a candidate for
- 109 public office, and the homicide is based on, is caused by, or is related to that official position,
- 110 act, capacity, or candidacy;
- 111 (m) the victim is or has been a peace officer, law enforcement officer, executive
- 112 officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror,
- 113 probation officer, or parole officer, and the victim is either on duty or the homicide is based on,
- 114 is caused by, or is related to that official position, and the actor knew, or reasonably should
- 115 have known, that the victim holds or has held that official position;
- 116 (n) the homicide was committed:
- 117 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
- 118 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
- 119 structure, or was mailed or delivered; or
- 120 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;

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

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

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

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

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

135 (t) the victim was younger than 14 years of age.

136 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless
137 indifference to human life, causes the death of another incident to an act, scheme, course of
138 conduct, or criminal episode during which the actor is a major participant in the commission or
139 attempted commission of:

140 (a) child abuse, Subsection 76-5-109(2)(a);

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

142 (c) rape of a child, Section 76-5-402.1;

143 (d) object rape of a child, Section 76-5-402.3;

144 (e) sodomy on a child, Section 76-5-403.1; or

145 (f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

146 (3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder
147 is a capital felony.

148 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder
149 is a noncapital first degree felony punishable by imprisonment for life without parole or by an
150 indeterminate term of not less than 20 years and which may be for life.

151 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice

152 of intent to seek the death penalty. The notice shall be served on the defendant or defense
153 counsel and filed with the court.

154 (ii) Notice of intent to seek the death penalty may be served and filed more than 60
155 days after the arraignment upon written stipulation of the parties or upon a finding by the court
156 of good cause.

157 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to
158 noncapital first degree felony aggravated murder during the period in which the prosecutor may
159 file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

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

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

165 (ii) under a reasonable belief that the circumstances provided a legal justification or
166 excuse for ~~[his]~~ the defendant's conduct although the conduct was not legally justifiable or
167 excusable under the existing circumstances.

168 (b) Under Subsection (4)(a)(i), emotional distress does not include:

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

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

171 (c) The reasonableness of an explanation or excuse under Subsection (4)(a)(i) or the
172 reasonable belief of the actor under Subsection (4)(a)(ii) shall be determined from the
173 viewpoint of a reasonable person under the then existing circumstances.

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

175 (i) aggravated murder to murder; and

176 (ii) attempted aggravated murder to attempted murder.

177 (5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes
178 a separate offense does not merge with the crime of aggravated murder.

179 (b) A person who is convicted of aggravated murder, based on an aggravating
180 circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be
181 convicted of, and punished for, the separate offense.

181a **§→ Section 3. Section 76-5-203 is amended to read:**

181b **76-5-203. Murder.**

181c **(1) As used in this section, "predicate offense" means:**

181d **(a) a violation of Section 58-37d-4 or 58-37d-5, Clandestine Drug Lab Act;**

181e **(b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18 years of**
181f **age;**

181g **(c) kidnapping under Section 76-5-301;**

181h **(d) child kidnapping under Section 76-5-301.1;**

181i **(e) aggravated kidnapping under Section 76-5-302;**

181j **(f) rape of a child under Section 76-5-402.1;**

181k **(g) object rape of a child under Section 76-5-402.3; ←§**

- 181l **§→** (h) sodomy upon a child under Section 76-5-403.1;
- 181m (i) forcible sexual abuse under Section 76-5-404;
- 181n (j) sexual abuse of a child or aggravated sexual abuse of a child under Section 76-5-404.1;
- 181o (k) rape under Section 76-5-402;
- 181p (l) object rape under Section 76-5-402.2;
- 181q (m) forcible sodomy under Section 76-5-403;
- 181r (n) aggravated sexual assault under Section 76-5-405;
- 181s (o) arson under Section 76-6-102;
- 181t (p) aggravated arson under Section 76-6-103;
- 181u (q) burglary under Section 76-6-202;
- 181v (r) aggravated burglary under Section 76-6-203;
- 181w (s) robbery under Section 76-6-301;
- 181x (t) aggravated robbery under Section 76-6-302;
- 181y (u) escape or aggravated escape under Section 76-8-309; or
- 181z (v) a felony violation of Subsection 76-10-508(2) regarding discharge of a firearm or dangerous
- 181aa **weapon.**
- 181ab (2) Criminal homicide constitutes murder if:
- 181ac (a) the actor intentionally or knowingly causes the death of another;
- 181ad (b) intending to cause serious bodily injury to another, the actor commits an act clearly
- 181ae **dangerous to human life that causes the death of another;**
- 181af (c) acting under circumstances evidencing a depraved indifference to human life, the actor
- 181ag **knowingly engages in conduct which creates a grave risk of death to another and thereby causes the**
- 181ah **death of another;**
- 181ai (d) (i) the actor is engaged in the commission, attempted commission, or immediate flight from
- 181aj **the commission or attempted commission of any predicate offense, or is a party to the predicate**
- 181ak **offense;**
- 181al (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of the
- 181am **commission, attempted commission, or immediate flight from the commission or attempted**
- 181an **commission of any predicate offense; and**
- 181ao (iii) the actor acted with the intent required as an element of the predicate offense;
- 181ap (e) the actor recklessly causes the death of a peace officer while in the commission or
- 181aq **attempted commission of:**
- 181ar (i) an assault against a peace officer under Section 76-5-102.4; or
- 181as (ii) interference with a peace officer while making a lawful arrest under Section 76-8-305 if the
- 181at **actor uses force against a peace officer;**
- 181au (f) commits a homicide which would be aggravated murder, but the offense is reduced
- 181av **pursuant to Subsection 76-5-202(4); or**
- 181aw (g) the actor commits aggravated murder, but special mitigation is established under Section
- 181ax **76-5-205.5.**
- 181ay (3) (a) Murder is a first degree felony.
- 181az (b) A person who is convicted of murder shall be sentenced to imprisonment for an
- 181ba **indeterminate term of not less than 15 years and which may be for life.**
- 181bb (4) (a) It is an affirmative defense to a charge of murder or attempted murder that **←§**

- 181bc **§→ the defendant caused the death of another or attempted to cause the death of another:**
- 181bd (i) under the influence of extreme emotional distress for which there is a reasonable
- 181be explanation or excuse; or
- 181bf (ii) under a reasonable belief that the circumstances provided a legal justification or excuse for
- 181bg his conduct although the conduct was not legally justifiable or excusable under the existing
- 181bh circumstances.
- 181bi (b) Under Subsection (4)(a)(i) emotional distress does not include:
- 181bj (i) a condition resulting from mental illness as defined in Section 76-2-305; or
- 181bk (ii) distress that is substantially caused by the defendant's own conduct.
- 181bl (c) The reasonableness of an explanation or excuse under Subsection (4)(a)(i) or the reasonable
- 181bm belief of the actor under Subsection (4)(a)(ii) shall be determined from the viewpoint of a reasonable
- 181bn person under the then existing circumstances.
- 181bo (d) This affirmative defense reduces charges only as follows:
- 181bp (i) murder to manslaughter; and
- 181bq (ii) attempted murder to attempted manslaughter.
- 181br (5) (a) Any predicate offense described in Subsection (1) that constitutes a separate offense
- 181bs does not merge with the crime of murder.
- 181bt (b) A person who is convicted of murder, based on a predicate offense described in Subsection
- 181bu (1) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.
- 181bv Section 4. Section 76-8-316 is amended to read:
- 181bw **76-8-316. Influencing, impeding, or retaliating against a judge or member of the Board of**
- 181bx **Pardons and Parole.**
- 181by (1) A person is guilty of a third degree felony if the person threatens to assault, kidnap, or
- 181bz murder a judge or a member of the Board of Pardons and Parole with the intent to impede, intimidate,
- 181ca or interfere with the judge or member of the board while engaged in the performance of the judge's or
- 181cb member's official duties or with the intent to retaliate against the judge or member on account of the
- 181cc performance of those official duties.
- 181cd (2) A person is guilty of a second degree felony if the person commits an assault on a judge or a
- 181ce member of the Board of Pardons and Parole with the intent to impede, intimidate, or interfere with
- 181cf the judge or member of the board while engaged in the performance of the judge's or member's
- 181cg official duties, or with the intent to retaliate against the judge or member on account of the
- 181ch performance of those official duties.
- 181ci (3) A person is guilty of a first degree felony if the person commits aggravated assault or
- 181cj attempted murder on a judge or a member of the Board of Pardons and Parole with the purpose to
- 181ck impede, intimidate, or interfere with the judge or member of the board while engaged in the
- 181cl performance of the judge's or member's official duties or with the purpose to retaliate against the
- 181cm judge or member on account of the performance of those official duties.
- 181cn (4) As used in this section:
- 181co (a) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the
- 181cp officer.
- 181cq (b) "Judge" means judges of all courts of record and courts not of record and court
- 181cr commissioners.
- 181cs (c) "Judge or member" includes the members of the judge's or member's immediate family. ←§

181ct **§→** (d) "Member of the Board of Pardons and Parole" means appointed members of the board.
181cu (5) A member of the Board of Pardons and Parole is an executive officer for purposes of
181cv **Subsection 76-5-202(1) [~~(k)~~] (m) .**
181cw **Section 5. Effective Date.**
181cx **If approved by two-thirds of all members elected to each house, this bill takes effect upon**
181cy **approval by the governor, or the day following the constitutional time limit of Utah Constitution**
181cz **Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto**
181da **override. ←§**

Legislative Review Note
as of 1-16-08 5:02 PM

Office of Legislative Research and General Counsel

S.B. 150 - Criminal Penalties Revisions

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
