

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 without
13 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;

17 ▶ provides that a person who is convicted of murder, based on a predicate offense that
18 also constitutes a separate offense, may also be convicted of, and punished for, the
19 separate offense; and

20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides an immediate effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **76-4-102**, as last amended by Laws of Utah 2002, Chapter 57

28 **76-5-202**, as last amended by Laws of Utah 2007, Chapters 275, 340, and 345

29 **76-5-203**, as last amended by Laws of Utah 2007, Chapter 340

30 **76-8-316**, as last amended by Laws of Utah 2007, Chapter 326



31
32 *Be it enacted by the Legislature of the state of Utah:*

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

34 **76-4-102. Attempt -- Classification of offenses.**

35 Criminal attempt to commit:

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

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

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

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

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

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

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

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

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

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

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

53 **76-5-202. Aggravated murder.**

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

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

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

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

63 (d) the homicide was committed incident to an act, scheme, course of conduct, or
64 criminal episode during which the actor committed or attempted to commit aggravated robbery,
65 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon
66 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child
67 abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson,
68 arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child
69 kidnapping;

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

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

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

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

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

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

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

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

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

85 (v) an offense committed in another jurisdiction which if committed in this state would

86 be a violation of a crime listed in this Subsection (1)(i);
87 (j) the actor was previously convicted of:
88 (i) aggravated assault, Subsection 76-5-103(2);
89 (ii) mayhem, Section 76-5-105;
90 (iii) kidnapping, Section 76-5-301;
91 (iv) child kidnapping, Section 76-5-301.1;
92 (v) aggravated kidnapping, Section 76-5-302;
93 (vi) rape, Section 76-5-402;
94 (vii) rape of a child, Section 76-5-402.1;
95 (viii) object rape, Section 76-5-402.2;
96 (ix) object rape of a child, Section 76-5-402.3;
97 (x) forcible sodomy, Section 76-5-403;
98 (xi) sodomy on a child, Section 76-5-403.1;
99 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
100 (xiii) aggravated sexual assault, Section 76-5-405;
101 (xiv) aggravated arson, Section 76-6-103;
102 (xv) aggravated burglary, Section 76-6-203;
103 (xvi) aggravated robbery, Section 76-6-302; or
104 (xvii) an offense committed in another jurisdiction which if committed in this state
105 would be a violation of a crime listed in this Subsection (1)(j);
106 (k) the homicide was committed for the purpose of:
107 (i) preventing a witness from testifying;
108 (ii) preventing a person from providing evidence or participating in any legal
109 proceedings or official investigation;
110 (iii) retaliating against a person for testifying, providing evidence, or participating in any
111 legal proceedings or official investigation; or
112 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
113 (l) the victim is or has been a local, state, or federal public official, or a candidate for

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

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

121 (n) the homicide was committed:

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

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

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

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

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

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

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

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

141 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless

142 indifference to human life, causes the death of another incident to an act, scheme, course of
143 conduct, or criminal episode during which the actor is a major participant in the commission or
144 attempted commission of:

- 145 (a) child abuse, Subsection 76-5-109(2)(a);
- 146 (b) child kidnapping, Section 76-5-301.1;
- 147 (c) rape of a child, Section 76-5-402.1;
- 148 (d) object rape of a child, Section 76-5-402.3;
- 149 (e) sodomy on a child, Section 76-5-403.1; or
- 150 (f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

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

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

156 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice
157 of intent to seek the death penalty. The notice shall be served on the defendant or defense
158 counsel and filed with the court.

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

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

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

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

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

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

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

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

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

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

180 (i) aggravated murder to murder; and

181 (ii) attempted aggravated murder to attempted murder.

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

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

187 Section 3. Section **76-5-203** is amended to read:

188 **76-5-203. Murder.**

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

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

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

193 (c) kidnapping under Section 76-5-301;

194 (d) child kidnapping under Section 76-5-301.1;

195 (e) aggravated kidnapping under Section 76-5-302;

196 (f) rape of a child under Section 76-5-402.1;

197 (g) object rape of a child under Section 76-5-402.3;

- 198 (h) sodomy upon a child under Section 76-5-403.1;
- 199 (i) forcible sexual abuse under Section 76-5-404;
- 200 (j) sexual abuse of a child or aggravated sexual abuse of a child under Section
- 201 76-5-404.1;
- 202 (k) rape under Section 76-5-402;
- 203 (l) object rape under Section 76-5-402.2;
- 204 (m) forcible sodomy under Section 76-5-403;
- 205 (n) aggravated sexual assault under Section 76-5-405;
- 206 (o) arson under Section 76-6-102;
- 207 (p) aggravated arson under Section 76-6-103;
- 208 (q) burglary under Section 76-6-202;
- 209 (r) aggravated burglary under Section 76-6-203;
- 210 (s) robbery under Section 76-6-301;
- 211 (t) aggravated robbery under Section 76-6-302;
- 212 (u) escape or aggravated escape under Section 76-8-309; or
- 213 (v) a felony violation of Subsection 76-10-508(2) regarding discharge of a firearm or
- 214 dangerous weapon.
- 215 (2) Criminal homicide constitutes murder if:
- 216 (a) the actor intentionally or knowingly causes the death of another;
- 217 (b) intending to cause serious bodily injury to another, the actor commits an act clearly
- 218 dangerous to human life that causes the death of another;
- 219 (c) acting under circumstances evidencing a depraved indifference to human life, the
- 220 actor knowingly engages in conduct which creates a grave risk of death to another and thereby
- 221 causes the death of another;
- 222 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
- 223 flight from the commission or attempted commission of any predicate offense, or is a party to
- 224 the predicate offense;
- 225 (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of

226 the commission, attempted commission, or immediate flight from the commission or attempted
227 commission of any predicate offense; and

228 (iii) the actor acted with the intent required as an element of the predicate offense;

229 (e) the actor recklessly causes the death of a peace officer while in the commission or
230 attempted commission of:

231 (i) an assault against a peace officer under Section 76-5-102.4; or

232 (ii) interference with a peace officer while making a lawful arrest under Section
233 76-8-305 if the actor uses force against a peace officer;

234 (f) commits a homicide which would be aggravated murder, but the offense is reduced
235 pursuant to Subsection 76-5-202(4); or

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

238 (3) (a) Murder is a first degree felony.

239 (b) A person who is convicted of murder shall be sentenced to imprisonment for an
240 indeterminate term of not less than 15 years and which may be for life.

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

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

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

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

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

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

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

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

255 (i) murder to manslaughter; and

256 (ii) attempted murder to attempted manslaughter.

257 (5) (a) Any predicate offense described in Subsection (1) that constitutes a separate
258 offense does not merge with the crime of murder.

259 (b) A person who is convicted of murder, based on a predicate offense described in
260 Subsection (1) that constitutes a separate offense, may also be convicted of, and punished for,
261 the separate offense.

262 Section 4. Section **76-8-316** is amended to read:

263 **76-8-316. Influencing, impeding, or retaliating against a judge or member of the**
264 **Board of Pardons and Parole.**

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

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

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

280 (4) As used in this section:

281 (a) "Immediate family" means parents, spouse, surviving spouse, children, and siblings

282 of the officer.

283 (b) "Judge" means judges of all courts of record and courts not of record and court
284 commissioners.

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

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

289 (5) A member of the Board of Pardons and Parole is an executive officer for purposes
290 of Subsection 76-5-202(1)~~(k)~~(m).

291 **Section 5. Effective date.**

292 If approved by two-thirds of all the members elected to each house, this bill takes effect
293 upon approval by the governor, or the day following the constitutional time limit of Utah
294 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
295 the date of veto override.