

**S.B. 150**  
**CRIMINAL PENALTIES REVISIONS**

Senator **Scott K. Jenkins** proposes the following amendments:

1. *Page 1, Line 16:*

16 convicted of, and punished for, the separate offense; ~~{and}~~

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

2. *Page 1, Line 21:*

21 ~~{None}~~ This bill provides an immediate effective date.

3. *Page 1, Line 25:*

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

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

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

4. *Page 6, Line 181:*

181 convicted of, and punished for, the separate offense.

= Section 3. 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;
  - (u) escape or aggravated escape under Section 76-8-309; or
  - (v) a felony violation of Subsection 76-10-508(2) regarding discharge of a firearm or dangerous weapon.
- (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 knowingly 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;
  - (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(4); or
  - (g) the actor commits aggravated murder, but special mitigation is established under Section 76-5-205.5.
- (3) (a) Murder is a first degree felony.
- (b) A person who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.
- (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.

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

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

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

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

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

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

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

(4) As used in this section:

(a) "Immediate family" means parents, spouse, surviving spouse, children, and siblings of the officer.

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

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

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

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

**Section 5. Effective Date.**

**If approved by two-thirds of all members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII,**

**Section 8, without the governor's signature, or in the case of a veto, the date of veto override.**