

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **76-5-102.4**, as last amended by Laws of Utah 2008, Chapter 131

35 **76-5-203**, as last amended by Laws of Utah 2008, Chapters 12 and 296



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

38 Section 1. Section **76-5-102.4** is amended to read:

39 **76-5-102.4. Assault against peace officer or a military service member in**
40 **uniform -- Penalty.**

41 (1) As used in this section[~~,"peace~~]:

42 (a) "Military service member in uniform" means:

43 (i) a member of any branch of the United States military who is wearing a uniform as
44 authorized by the member's branch of service; or

45 (ii) a member of the National Guard serving as provided in Section 39-1-5 or 39-1-9.

46 (b) "Peace officer" means a law enforcement officer certified under Section
47 53-13-103.

48 [~~(2)(a) Any person who~~]

49 (2) (a) A person is guilty of a class A misdemeanor, except as provided in Subsection
50 (2)(b), who:

51 (i) assaults a peace officer, with knowledge that he is a peace officer, and when the
52 peace officer is acting within the scope of his authority as a peace officer[~~, is guilty of a class~~
53 A misdemeanor, except as provided in Subsection (2)(b).]; or

54 (ii) assaults a military service member in uniform when that service member is on
55 orders and acting within the scope of authority granted to the military service member in
56 uniform.

57 (b) A person who violates this section and has been previously convicted of a violation

58 of this section is guilty of a third degree felony.

59 (3) A person who violates this section shall serve, in jail or another correctional
60 facility, a minimum of:

61 (a) 90 consecutive days for a second offense; and

62 (b) 180 consecutive days for each subsequent offense.

63 (4) The court may suspend the imposition or execution of the sentence required under
64 Subsection (3) if the court finds that the interests of justice would be best served and makes
65 specific findings concerning the disposition in writing or on the record.

66 (5) This section does not affect or limit any individual's constitutional right to the
67 lawful expression of free speech, the right of assembly, or any other recognized rights secured
68 by the Constitution or laws of Utah or by the Constitution or laws of the United States.

69 Section 2. Section **76-5-203** is amended to read:

70 **76-5-203. Murder.**

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

72 (a) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;

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

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

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

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

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

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

80 (h) sodomy upon a child under Section 76-5-403.1;

81 (i) forcible sexual abuse under Section 76-5-404;

82 (j) sexual abuse of a child or aggravated sexual abuse of a child under Section
83 76-5-404.1;

84 (k) rape under Section 76-5-402;

85 (l) object rape under Section 76-5-402.2;

- 86 (m) forcible sodomy under Section 76-5-403;
- 87 (n) aggravated sexual assault under Section 76-5-405;
- 88 (o) arson under Section 76-6-102;
- 89 (p) aggravated arson under Section 76-6-103;
- 90 (q) burglary under Section 76-6-202;
- 91 (r) aggravated burglary under Section 76-6-203;
- 92 (s) robbery under Section 76-6-301;
- 93 (t) aggravated robbery under Section 76-6-302;
- 94 (u) escape or aggravated escape under Section 76-8-309; or
- 95 (v) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a
- 96 firearm or dangerous weapon.
- 97 (2) Criminal homicide constitutes murder if:
- 98 (a) the actor intentionally or knowingly causes the death of another;
- 99 (b) intending to cause serious bodily injury to another, the actor commits an act clearly
- 100 dangerous to human life that causes the death of another;
- 101 (c) acting under circumstances evidencing a depraved indifference to human life, the
- 102 actor knowingly engages in conduct which creates a grave risk of death to another and thereby
- 103 causes the death of another;
- 104 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
- 105 flight from the commission or attempted commission of any predicate offense, or is a party to
- 106 the predicate offense;
- 107 (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of
- 108 the commission, attempted commission, or immediate flight from the commission or
- 109 attempted commission of any predicate offense; and
- 110 (iii) the actor acted with the intent required as an element of the predicate offense;
- 111 (e) the actor recklessly causes the death of a peace officer or military service member
- 112 in uniform while in the commission or attempted commission of:
- 113 (i) an assault against a peace officer under Section 76-5-102.4; [or]

114 (ii) interference with a peace officer while making a lawful arrest under Section
115 76-8-305 if the actor uses force against a peace officer; or
116 (iii) an assault against a military service member in uniform under Section 76-5-102.4;
117 (f) commits a homicide which would be aggravated murder, but the offense is reduced
118 pursuant to Subsection 76-5-202(4); or
119 (g) the actor commits aggravated murder, but special mitigation is established under
120 Section 76-5-205.5.

121 (3) (a) Murder is a first degree felony.
122 (b) A person who is convicted of murder shall be sentenced to imprisonment for an
123 indeterminate term of not less than 15 years and which may be for life.

124 (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the
125 defendant caused the death of another or attempted to cause the death of another:
126 (i) under the influence of extreme emotional distress for which there is a reasonable
127 explanation or excuse; or
128 (ii) under a reasonable belief that the circumstances provided a legal justification or
129 excuse for his conduct although the conduct was not legally justifiable or excusable under the
130 existing circumstances.

131 (b) Under Subsection (4)(a)(i) emotional distress does not include:
132 (i) a condition resulting from mental illness as defined in Section 76-2-305; or
133 (ii) distress that is substantially caused by the defendant's own conduct.

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

137 (d) This affirmative defense reduces charges only as follows:
138 (i) murder to manslaughter; and
139 (ii) attempted murder to attempted manslaughter.

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

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