

**ASSAULT ON SERVICE MEMBER IN  
UNIFORM**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: Peter C. Knudson

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**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code regarding assault on a military service member in uniform.

**Highlighted Provisions:**

This bill:

- ▶ provides a penalty for committing an assault against a military service member in uniform;
- ▶ provides for minimum incarceration time and enhanced penalty for committing a second or subsequent offense against a military service member in uniform;
- ▶ provides that the court may suspend the imposition or execution of the sentence if the court finds that by doing so the interests of justice would be best served and makes specific findings concerning the disposition on the record;
- ▶ provides that the offense does not affect or limit the exercise of any individual's constitutional rights, including the right of free speech and the right of assembly;
- ▶ provides that criminal homicide constitutes murder if the actor recklessly causes the death of a military service member in uniform while in the commission or attempted commission of an assault against a military service member in uniform under Section 76-5-102.4; and
- ▶ provides a definition of "military service member in uniform."



28 **Monies Appropriated in this Bill:**

29 None

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 uniform**

40 **-- Penalty.**

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

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

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

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

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

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

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

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

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

56 (b) A person who violates this section and has been previously convicted of a violation  
57 of this section is guilty of a third degree felony.

58 (3) A person who violates this section shall serve, in jail or another correctional

59 facility, a minimum of:

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

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

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

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

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

69 **76-5-203. Murder.**

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

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

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

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

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

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

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

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

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

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

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

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

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

85 (m) forcible sodomy under Section 76-5-403;

86 (n) aggravated sexual assault under Section 76-5-405;

87 (o) arson under Section 76-6-102;

88 (p) aggravated arson under Section 76-6-103;

89 (q) burglary under Section 76-6-202;

- 90 (r) aggravated burglary under Section 76-6-203;
- 91 (s) robbery under Section 76-6-301;
- 92 (t) aggravated robbery under Section 76-6-302;
- 93 (u) escape or aggravated escape under Section 76-8-309; or
- 94 (v) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a
- 95 firearm or dangerous weapon.
- 96 (2) Criminal homicide constitutes murder if:
- 97 (a) the actor intentionally or knowingly causes the death of another;
- 98 (b) intending to cause serious bodily injury to another, the actor commits an act clearly
- 99 dangerous to human life that causes the death of another;
- 100 (c) acting under circumstances evidencing a depraved indifference to human life, the
- 101 actor knowingly engages in conduct which creates a grave risk of death to another and thereby
- 102 causes the death of another;
- 103 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
- 104 flight from the commission or attempted commission of any predicate offense, or is a party to
- 105 the predicate offense;
- 106 (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of
- 107 the commission, attempted commission, or immediate flight from the commission or attempted
- 108 commission of any predicate offense; and
- 109 (iii) the actor acted with the intent required as an element of the predicate offense;
- 110 (e) the actor recklessly causes the death of a peace officer or military service member
- 111 in uniform while in the commission or attempted commission of:
- 112 (i) an assault against a peace officer under Section 76-5-102.4; [or]
- 113 (ii) interference with a peace officer while making a lawful arrest under Section
- 114 76-8-305 if the actor uses force against a peace officer; or
- 115 (iii) an assault against a military service member in uniform under Section 76-5-102.4;
- 116 (f) commits a homicide which would be aggravated murder, but the offense is reduced
- 117 pursuant to Subsection 76-5-202(4); or
- 118 (g) the actor commits aggravated murder, but special mitigation is established under
- 119 Section 76-5-205.5.
- 120 (3) (a) Murder is a first degree felony.

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

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

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

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

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

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

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

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

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

137 (i) murder to manslaughter; and

138 (ii) attempted murder to attempted manslaughter.

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

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

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**Legislative Review Note**  
**as of 12-12-08 10:05 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 228 - Assault on Service Member in Uniform**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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