

HOMICIDE AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding homicide offenses and the related provisions for affirmative defense and special mitigation.

Highlighted Provisions:

This bill:

► removes the statutory defense of extreme emotional distress from the aggravated murder and murder statutes, and places it instead in the special mitigation statute, where extreme emotional distress may reduce the level of a homicide offense.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-202, as last amended by Laws of Utah 2008, Chapter 12

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

76-5-205.5, as enacted by Laws of Utah 1999, Chapter 2

77-14-4, as last amended by Laws of Utah 1999, Chapter 2

77-16a-102, as last amended by Laws of Utah 2002, Chapter 61

77-16a-301, as last amended by Laws of Utah 1999, Chapter 2



28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

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

Section 1. Section **76-5-202** is amended to read:

76-5-202. Aggravated murder.

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

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

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

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

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

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

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

(g) the homicide was committed for pecuniary gain;

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

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

- 59 (i) aggravated murder, Section 76-5-202;
- 60 (ii) attempted aggravated murder, Section 76-5-202;
- 61 (iii) murder, Section 76-5-203;
- 62 (iv) attempted murder, Section 76-5-203; or
- 63 (v) an offense committed in another jurisdiction which if committed in this state would
- 64 be a violation of a crime listed in this Subsection (1)(i);
- 65 (j) the actor was previously convicted of:
- 66 (i) aggravated assault, Subsection 76-5-103(2);
- 67 (ii) mayhem, Section 76-5-105;
- 68 (iii) kidnapping, Section 76-5-301;
- 69 (iv) child kidnapping, Section 76-5-301.1;
- 70 (v) aggravated kidnapping, Section 76-5-302;
- 71 (vi) rape, Section 76-5-402;
- 72 (vii) rape of a child, Section 76-5-402.1;
- 73 (viii) object rape, Section 76-5-402.2;
- 74 (ix) object rape of a child, Section 76-5-402.3;
- 75 (x) forcible sodomy, Section 76-5-403;
- 76 (xi) sodomy on a child, Section 76-5-403.1;
- 77 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 78 (xiii) aggravated sexual assault, Section 76-5-405;
- 79 (xiv) aggravated arson, Section 76-6-103;
- 80 (xv) aggravated burglary, Section 76-6-203;
- 81 (xvi) aggravated robbery, Section 76-6-302; or
- 82 (xvii) an offense committed in another jurisdiction which if committed in this state
- 83 would be a violation of a crime listed in this Subsection (1)(j);
- 84 (k) the homicide was committed for the purpose of:
- 85 (i) preventing a witness from testifying;
- 86 (ii) preventing a person from providing evidence or participating in any legal
- 87 proceedings or official investigation;
- 88 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 89 any legal proceedings or official investigation; or

90 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;

91 (l) the victim is or has been a local, state, or federal public official, or a candidate for
92 public office, and the homicide is based on, is caused by, or is related to that official position,
93 act, capacity, or candidacy;

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

99 (n) the homicide was committed:

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

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

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

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

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

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

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

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

119 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless
120 indifference to human life, causes the death of another incident to an act, scheme, course of

121 conduct, or criminal episode during which the actor is a major participant in the commission or
122 attempted commission of:

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

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

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

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

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

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

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

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

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

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

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

143 (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted
144 aggravated murder that the defendant caused the death of another or attempted to cause the
145 death of another [~~:(i) under the influence of extreme emotional distress for which there is a~~
146 ~~reasonable explanation or excuse; or (ii)] under a reasonable belief that the circumstances
147 provided a legal justification or excuse for the [defendant's] conduct although the conduct was
148 not legally justifiable or excusable under the existing circumstances.~~

149 [~~(b) Under Subsection (4)(a)(i), emotional distress does not include:]~~

150 [~~(i) a condition resulting from mental illness as defined in Section 76-2-305; or]~~

151 [~~(ii) distress that is substantially caused by the defendant's own conduct.]~~

152 ~~[(e)]~~ (b) The ~~[reasonableness of an explanation or excuse under Subsection (4)(a)(i) or~~
153 ~~the]~~ reasonable belief of the actor under Subsection (4)(a)~~[(ii)]~~ shall be determined from the
154 viewpoint of a reasonable person under the then existing circumstances.

155 ~~[(d)]~~ (c) This affirmative defense reduces charges only as follows:

- 156 (i) aggravated murder to murder; and
- 157 (ii) attempted aggravated murder to attempted murder.

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

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

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

164 **76-5-203. Murder.**

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

- 166 (a) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;
- 167 (b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18
168 years of age;
- 169 (c) kidnapping under Section 76-5-301;
- 170 (d) child kidnapping under Section 76-5-301.1;
- 171 (e) aggravated kidnapping under Section 76-5-302;
- 172 (f) rape of a child under Section 76-5-402.1;
- 173 (g) object rape of a child under Section 76-5-402.3;
- 174 (h) sodomy upon a child under Section 76-5-403.1;
- 175 (i) forcible sexual abuse under Section 76-5-404;
- 176 (j) sexual abuse of a child or aggravated sexual abuse of a child under Section
177 76-5-404.1;
- 178 (k) rape under Section 76-5-402;
- 179 (l) object rape under Section 76-5-402.2;
- 180 (m) forcible sodomy under Section 76-5-403;
- 181 (n) aggravated sexual assault under Section 76-5-405;
- 182 (o) arson under Section 76-6-102;

- 183 (p) aggravated arson under Section 76-6-103;
- 184 (q) burglary under Section 76-6-202;
- 185 (r) aggravated burglary under Section 76-6-203;
- 186 (s) robbery under Section 76-6-301;
- 187 (t) aggravated robbery under Section 76-6-302;
- 188 (u) escape or aggravated escape under Section 76-8-309; or
- 189 (v) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a
190 firearm or dangerous weapon.
- 191 (2) Criminal homicide constitutes murder if:
 - 192 (a) the actor intentionally or knowingly causes the death of another;
 - 193 (b) intending to cause serious bodily injury to another, the actor commits an act clearly
194 dangerous to human life that causes the death of another;
 - 195 (c) acting under circumstances evidencing a depraved indifference to human life, the
196 actor knowingly engages in conduct which creates a grave risk of death to another and thereby
197 causes the death of another;
 - 198 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
199 flight from the commission or attempted commission of any predicate offense, or is a party to
200 the predicate offense;
 - 201 (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of
202 the commission, attempted commission, or immediate flight from the commission or attempted
203 commission of any predicate offense; and
 - 204 (iii) the actor acted with the intent required as an element of the predicate offense;
 - 205 (e) the actor recklessly causes the death of a peace officer while in the commission or
206 attempted commission of:
 - 207 (i) an assault against a peace officer under Section 76-5-102.4; or
 - 208 (ii) interference with a peace officer while making a lawful arrest under Section
209 76-8-305 if the actor uses force against a peace officer;
 - 210 (f) commits a homicide which would be aggravated murder, but the offense is reduced
211 pursuant to Subsection 76-5-202(4); or
 - 212 (g) the actor commits aggravated murder, but special mitigation is established under
213 Section 76-5-205.5.

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

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

217 (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the
218 defendant caused the death of another or attempted to cause the death of another~~[-(i) under the~~
219 ~~influence of extreme emotional distress for which there is a reasonable explanation or excuse;~~
220 ~~or (ii)]~~ under a reasonable belief that the circumstances provided a legal justification or excuse
221 for ~~[his]~~ the conduct although the conduct was not legally justifiable or excusable under the
222 existing circumstances.

223 ~~[(b) Under Subsection (4)(a)(i) emotional distress does not include:]~~

224 ~~[(i) a condition resulting from mental illness as defined in Section 76-2-305; or]~~

225 ~~[(ii) distress that is substantially caused by the defendant's own conduct.]~~

226 ~~[(c)]~~ (b) The ~~[reasonableness of an explanation or excuse under Subsection (4)(a)(i) or~~
227 ~~the]~~ reasonable belief of the actor under Subsection (4)(a)~~[(ii)]~~ shall be determined from the
228 viewpoint of a reasonable person under the then existing circumstances.

229 ~~[(d)]~~ (c) This affirmative defense reduces charges only ~~[as follows]~~ from:

230 (i) murder to manslaughter; and

231 (ii) attempted murder to attempted manslaughter.

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

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

237 Section 3. Section **76-5-205.5** is amended to read:

238 **76-5-205.5. Special mitigation reducing the level of criminal homicide offense --**
239 **Burden of proof -- Application to reduce offense.**

240 (1) Special mitigation exists when the actor causes the death of another or attempts to
241 cause the death of another:

242 (a) (i) ~~[the actor causes the death of another]~~ under circumstances that are not legally
243 justified, but the actor acts under a delusion attributable to a mental illness as defined in
244 Section 76-2-305; ~~[and]~~

245 ~~[(b)]~~ (ii) the nature of the delusion is such that, if the facts existed as the defendant
246 believed them to be in ~~[his]~~ the delusional state, those facts would provide a legal justification
247 for ~~[his]~~ the defendant's conduct[-]; and

248 ~~[(2) This section applies only if]~~

249 (iii) the defendant's actions, in light of ~~[his]~~ the delusion, were reasonable from the
250 objective viewpoint of a reasonable person[-]; or

251 (b) under the influence of extreme emotional distress for which there is a reasonable
252 explanation or excuse.

253 ~~[(3)]~~ (2) A defendant who was under the influence of voluntarily consumed, injected,
254 or ingested alcohol, controlled substances, or volatile substances at the time of the alleged
255 offense may not claim mitigation of the offense under ~~[this section]~~ Subsection (1)(a) on the
256 basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed
257 to the mental illness.

258 (3) Under Subsection (1)(b), emotional distress does not include:

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

260 (b) distress that is substantially caused by the defendant's own conduct.

261 (4) The reasonableness of an explanation or excuse under Subsection (1)(b) shall be
262 determined from the viewpoint of a reasonable person under the then existing circumstances.

263 ~~[(4)]~~ (5) (a) If the trier of fact finds the elements of an offense as listed in Subsection
264 ~~[(4)]~~ (5)(b) are proven beyond a reasonable doubt, and also that the existence of special
265 mitigation under this section is established by a preponderance of the evidence, it shall return a
266 verdict on the reduced charge as provided in Subsection ~~[(4)]~~ (5)(b).

267 (b) If under Subsection ~~[(4)]~~ (5)(a) the offense is:

268 (i) aggravated murder, the defendant shall instead be found guilty of murder;

269 (ii) attempted aggravated murder, the defendant shall instead be found guilty of
270 attempted murder;

271 (iii) murder, the defendant shall instead be found guilty of manslaughter; or

272 (iv) attempted murder, the defendant shall instead be found guilty of attempted
273 manslaughter.

274 ~~[(5)]~~ (6) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to
275 establish the existence of the special mitigation.

276 (b) If the jury does find special mitigation by a unanimous vote, it shall return a verdict
277 on the reduced charge as provided in Subsection [~~(4)~~] (5).

278 (c) If the jury finds by a unanimous vote that special mitigation has not been
279 established, it shall convict the defendant of the greater offense for which the prosecution has
280 established all the elements beyond a reasonable doubt.

281 (d) If the jury is unable to unanimously agree whether or not special mitigation has
282 been established, the result is a hung jury.

283 [~~(6)~~] (7) (a) If the issue of special mitigation is submitted to the trier of fact, it shall
284 return a special verdict indicating whether the existence of special mitigation has been found.

285 (b) The trier of fact shall return the special verdict at the same time as the general
286 verdict, to indicate the basis for its general verdict.

287 [~~(7)~~] (8) Special mitigation under this section does not, in any case, reduce the level of
288 an offense by more than one degree from that offense, the elements of which the evidence has
289 established beyond a reasonable doubt.

290 Section 4. Section **77-14-4** is amended to read:

291 **77-14-4. Insanity or diminished mental capacity -- Notice requirement.**

292 (1) If a defendant proposes to offer evidence that [~~he~~] the defendant is not guilty as a
293 result of insanity or that [~~he~~] the defendant had diminished mental capacity, or proposes to
294 offer evidence in mitigation of a criminal homicide or attempted criminal homicide offense
295 under [~~Section~~] Subsection 76-5-205.5(1)(a), [~~he~~] the defendant shall file and serve the
296 prosecuting attorney with written notice of [~~his~~] the intention to claim the defense at the time of
297 arraignment or as soon afterward as practicable, but not fewer than 30 days before the trial.

298 (2) If the court receives notice that a defendant intends to claim that [~~he~~] the defendant
299 is not guilty by reason of insanity or that [~~he~~] the defendant had diminished mental capacity,
300 the court shall proceed in accordance with the requirements described in Section 77-16a-301.

301 Section 5. Section **77-16a-102** is amended to read:

302 **77-16a-102. Jury instructions.**

303 (1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall
304 instruct the jury that it may find the defendant:

305 (a) guilty;

306 (b) guilty and mentally ill at the time of the offense;

307 (c) guilty of a lesser offense;

308 (d) guilty of a lesser offense and mentally ill at the time of the offense;

309 (e) not guilty by reason of insanity; or

310 (f) not guilty.

311 (2) (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or
312 asserts special mitigation reducing the level of an offense pursuant to ~~[Section]~~ Subsection
313 76-5-205.5(1)(a), or when the evidence raises the issue and either party requests the instruction,
314 the jury shall be instructed that if it finds a defendant guilty by proof beyond a reasonable doubt
315 of any charged offense or lesser included offense, it shall also return a special verdict indicating
316 whether it finds that the defendant was mentally ill at the time of the offense.

317 (b) If the jury finds the defendant guilty of the charged offense by proof beyond a
318 reasonable doubt, and by special verdict finds the defendant was mentally ill at the time of the
319 offense, it shall return the general verdict of "guilty and mentally ill at the time of the offense."

320 (c) If the jury finds the defendant guilty of a lesser offense by proof beyond a
321 reasonable doubt, and by special verdict finds the defendant was mentally ill at the time of the
322 offense, it shall return the general verdict of "guilty of a lesser offense and mentally ill at the
323 time of the offense."

324 (d) If the jury finds the defendant guilty of the charged offense or a lesser included
325 offense and does not find that the defendant was mentally ill at the time of the offense, the jury
326 shall return a verdict of "guilty" of that offense, along with the special verdict form indicating
327 that the jury did not find the defendant mentally ill at the time of the offense.

328 (e) The special verdict shall be returned by the jury at the same time as the general
329 verdict, to indicate the basis for its general verdict.

330 (3) In determining whether a defendant should be found guilty and mentally ill at the
331 time of the offense, the jury shall be instructed that the standard of proof applicable to a finding
332 of mental illness is by a preponderance of the evidence. The jury shall also be instructed that
333 the standard of preponderance of the evidence does not apply to the elements establishing a
334 defendant's guilt, and that the proof of the elements establishing a defendant's guilt of any
335 offense must be proven beyond a reasonable doubt.

336 (4) (a) When special mitigation based on extreme emotional distress is at issue
337 pursuant to Subsection 76-5-205.5(1)(b), the jury shall, in addition to its general verdict, return

338 a special verdict.

339 (b) The special verdict shall be returned by the jury at the same time as the general
340 verdict, to indicate the basis for its general verdict.

341 Section 6. Section **77-16a-301** is amended to read:

342 **77-16a-301. Mental examination of defendant**

343 (1) (a) When the court receives notice that a defendant intends to claim that [~~he~~] the
344 defendant is not guilty by reason of insanity or that [~~he~~] the defendant had diminished mental
345 capacity, or that [~~he~~] the defendant intends to assert special mitigation under [~~Section~~]
346 Subsection 76-5-205.5(1)(a), the court shall order the Department of Human Services to
347 examine the defendant and investigate [~~his~~] the defendant's mental condition.

348 (b) The person or organization directed by the department to conduct the examination
349 shall testify at the request of the court or either party in any proceeding in which the testimony
350 is otherwise admissible.

351 (c) Pending trial, unless the court or the executive director directs otherwise, the
352 defendant shall be retained in the same custody or status [~~he~~] the defendant was in at the time
353 the examination was ordered.

354 (2) (a) The defendant shall [~~make himself~~] be available and shall fully cooperate in the
355 examination by the department and any other independent examiners for the defense and the
356 prosecuting attorney.

357 (b) If the defendant fails to [~~make himself~~] be available and to fully cooperate, and that
358 failure is established to the satisfaction of the court at a hearing prior to trial, the defendant is
359 barred from presenting expert testimony relating to [~~his~~] the defendant's defense of mental
360 illness at the trial of the case.

361 (c) The department shall complete the examination within 30 days after the court's
362 order, and shall prepare and provide to the court prosecutor and defense counsel a written
363 report concerning the condition of the defendant.

364 (3) Within ten days after receipt of the report from the department, but not later than
365 five days before the trial of the case, or at any other time the court directs, the prosecuting
366 attorney shall file and serve upon the defendant a notice of rebuttal of the defense of mental
367 illness, which shall contain the names of witnesses the prosecuting attorney proposes to call in
368 rebuttal.

369 (4) The reports of any other independent examiner are admissible as evidence upon
370 stipulation of the prosecution and defense.

371 (5) This section does not prevent any party from producing any other testimony as to
372 the mental condition of the defendant. Expert witnesses who are not appointed by the court are
373 not entitled to compensation under Subsection (7).

374 (6) This section does not require the admission of evidence not otherwise admissible.

375 (7) Expenses of examination ordered by the court under this section shall be paid by
376 the Department of Human Services. Travel expenses associated with the examination incurred
377 by the defendant shall be charged by the department to the county where prosecution is
378 commenced. Examination of defendants charged with violation of municipal or county
379 ordinances shall be charged by the department to the entity commencing the prosecution.

Legislative Review Note

as of 1-22-09 11:32 AM

Office of Legislative Research and General Counsel

S.B. 85 - Homicide Amendments

Fiscal Note

2009 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.
