

CHILD TORTURE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derek E. Brown

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding child abuse to establish an offense of aggravated child abuse and child torture.

Highlighted Provisions:

This bill:

- ▶ establishes the elements of the offense of aggravated child abuse and child torture;
- ▶ provides definitions;
- ▶ provides penalties;
- ▶ establishes the offense of failure to report aggravated child abuse and child torture and specifies the penalty; and
- ▶ provides that the offense of failure to report may be prosecuted at the latest within one year after law enforcement discovers the failure to report.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-1002, as last amended by Laws of Utah 2008, Chapters 45 and 299

76-1-301, as last amended by Laws of Utah 2011, Chapter 24



- 28 **76-1-302**, as last amended by Laws of Utah 2011, Chapter 320
- 29 **76-2-401**, as last amended by Laws of Utah 2000, Chapter 126
- 30 **76-3-203.5**, as last amended by Laws of Utah 2011, Chapters 320 and 366
- 31 **76-3-406**, as last amended by Laws of Utah 2011, Chapter 366
- 32 **76-4-102**, as last amended by Laws of Utah 2008, Chapters 12 and 179
- 33 **76-5-109**, as last amended by Laws of Utah 2011, Chapter 366
- 34 **76-5-202**, as last amended by Laws of Utah 2010, Chapters 13 and 373
- 35 **76-5-203**, as last amended by Laws of Utah 2009, Chapters 125 and 206
- 36 **76-5-208**, as last amended by Laws of Utah 2008, Chapter 152

37 ENACTS:

38 **76-5-109.5**, Utah Code Annotated 1953



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

41 Section 1. Section **62A-4a-1002** is amended to read:

42 **62A-4a-1002. Definitions.**

43 As used in this part:

44 (1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect"

45 means:

46 (i) if committed by a person 18 years of age or older:

47 (A) chronic abuse;

48 (B) severe abuse;

49 (C) sexual abuse;

50 (D) sexual exploitation;

51 (E) abandonment;

52 (F) chronic neglect; or

53 (G) severe neglect; or

54 (ii) if committed by a person under the age of 18:

55 (A) serious physical injury, as defined in [~~Subsection 76-5-109(1)~~] Section 76-5-109.5,

56 to another child which indicates a significant risk to other children; or

57 (B) sexual behavior with or upon another child which indicates a significant risk to

58 other children.

- 59 (b) "Severe type of child abuse or neglect" does not include:
- 60 (i) the use of reasonable and necessary physical restraint or force by an educator in
61 accordance with Subsection 53A-11-802(2) or Section 76-2-401;
- 62 (ii) a person's conduct that:
- 63 (A) is justified under Section 76-2-401; or
- 64 (B) constitutes the use of reasonable and necessary physical restraint or force in
65 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
66 other dangerous object in the possession or under the control of a child or to protect the child or
67 another person from physical injury; or
- 68 (iii) a health care decision made for a child by the child's parent or guardian, unless,
69 subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by
70 clear and convincing evidence, that the health care decision is not reasonable and informed.
- 71 (2) "Significant risk" means a risk of harm that is determined to be significant in
72 accordance with risk assessment tools and rules established by the division that focus on:
- 73 (a) age;
- 74 (b) social factors;
- 75 (c) emotional factors;
- 76 (d) sexual factors;
- 77 (e) intellectual factors;
- 78 (f) family risk factors; and
- 79 (g) other related considerations.
- 80 Section 2. Section **76-1-301** is amended to read:
- 81 **76-1-301. Offenses for which prosecution may be commenced at any time.**
- 82 (1) As used in this section:
- 83 (a) "Aggravating offense" means any offense incident to which a homicide was
84 committed as described in Subsection 76-5-202(1)(d) or (e) or Subsection 76-5-202(2).
- 85 (b) "Predicate offense" means an offense described in Section 76-5-203(1) if a person
86 other than a party as defined in Section 76-2-202 was killed in the course of the commission,
87 attempted commission, or immediate flight from the commission or attempted commission of
88 the offense.
- 89 (2) Notwithstanding any other provisions of this code, prosecution for the following

90 offenses may be commenced at any time:

91 (a) capital felony;

92 (b) aggravated murder;

93 (c) murder;

94 (d) manslaughter;

95 (e) child abuse homicide;

96 (f) aggravated kidnapping;

97 (g) child kidnapping;

98 (h) rape;

99 (i) rape of a child;

100 (j) object rape;

101 (k) object rape of a child;

102 (l) forcible sodomy;

103 (m) sodomy on a child;

104 (n) sexual abuse of a child;

105 (o) aggravated sexual abuse of a child;

106 (p) aggravated sexual assault; [~~or~~]

107 (q) aggravated child abuse and child torture; or

108 [~~(r)~~] (r) any predicate offense to a murder or aggravating offense to an aggravated
109 murder.

110 Section 3. Section **76-1-302** is amended to read:

111 **76-1-302. Time limitations for prosecution of offenses -- Provisions if DNA**
112 **evidence would identify the defendant -- Commencement of prosecution.**

113 (1) Except as otherwise provided, a prosecution for:

114 (a) a felony or negligent homicide shall be commenced within four years after it is
115 committed, except that prosecution for:

116 (i) forcible sexual abuse shall be commenced within eight years after the offense is
117 committed, if within four years after its commission the offense is reported to a law
118 enforcement agency; [~~and~~]

119 (ii) aggravated child abuse and child torture shall be commenced no later than within
120 one year after a law enforcement agency determines a failure to report the offense as a violation

121 of Section 76-5-109.5; and

122 ~~[(ii)]~~ (iii) incest shall be commenced within eight years after the offense is committed,
123 if within four years after its commission the offense is reported to a law enforcement agency;

124 (b) a misdemeanor other than negligent homicide shall be commenced within two years
125 after it is committed; and

126 (c) any infraction shall be commenced within one year after it is committed.

127 (2) (a) Notwithstanding Subsection (1), prosecution for the offenses listed in
128 Subsections 76-3-203.5(1)(c)(i)(A) through ~~[(BB)]~~ (CC) may be commenced at any time if the
129 identity of the person who committed the crime is unknown but DNA evidence is collected that
130 would identify the person at a later date.

131 (b) Subsection (2)(a) does not apply if the statute of limitations on a crime has run as of
132 May 5, 2003, and no charges have been filed.

133 (3) If the statute of limitations would have run but for the provisions of Subsection (2)
134 and identification of a perpetrator is made through DNA, a prosecution shall be commenced
135 within one year of the discovery of the identity of the perpetrator.

136 (4) A prosecution is commenced upon:

137 (a) the finding and filing of an indictment by a grand jury;

138 (b) the filing of a complaint or information; or

139 (c) the issuance of a citation.

140 Section 4. Section **76-2-401** is amended to read:

141 **76-2-401. Justification as defense -- When allowed.**

142 (1) Conduct which is justified is a defense to prosecution for any offense based on the
143 conduct. The defense of justification may be claimed:

144 (a) when the actor's conduct is in defense of persons or property under the
145 circumstances described in Sections 76-2-402 through 76-2-406 of this part;

146 (b) when the actor's conduct is reasonable and in fulfillment of his duties as a
147 governmental officer or employee;

148 (c) when the actor's conduct is reasonable discipline of minors by parents, guardians,
149 teachers, or other persons in loco parentis, as limited by Subsection (2);

150 (d) when the actor's conduct is reasonable discipline of persons in custody under the
151 laws of the state; or

152 (e) when the actor's conduct is justified for any other reason under the laws of this
153 state.

154 (2) The defense of justification under Subsection (1)(c) is not available if the offense
155 charged involves causing serious bodily injury, as defined in Section 76-1-601, serious physical
156 injury, as defined in Section ~~[76-5-109]~~ 76-5-109.5, or the death of the minor.

157 Section 5. Section **76-3-203.5** is amended to read:

158 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

159 (1) As used in this section:

160 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
161 United States, or any district, possession, or territory of the United States for which the
162 maximum punishment the offender may be subjected to exceeds one year in prison.

163 (b) "Habitual violent offender" means a person convicted within the state of any violent
164 felony and who on at least two previous occasions has been convicted of a violent felony and
165 committed to either prison in Utah or an equivalent correctional institution of another state or
166 of the United States either at initial sentencing or after revocation of probation.

167 (c) "Violent felony" means:

168 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit
169 any of the following offenses punishable as a felony:

170 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
171 Title 76, Chapter 6, Part 1, Property Destruction;

172 (B) assault by prisoner, Section 76-5-102.5;

173 (C) disarming a police officer, Section 76-5-102.8;

174 (D) aggravated assault, Section 76-5-103;

175 (E) aggravated assault by prisoner, Section 76-5-103.5;

176 (F) mayhem, Section 76-5-105;

177 (G) stalking, Subsection 76-5-106.5(2) or (3);

178 (H) threat of terrorism, Section 76-5-107.3;

179 (I) child abuse, ~~[Subsection]~~ Section 76-5-109[(2)(a) or (b)];

180 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;

181 (K) aggravated child abuse and child torture under Section 76-5-109.5;

182 ~~[(K)]~~ (L) abuse or neglect of a child with a disability, Section 76-5-110;

183 ~~[(L)]~~ (M) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;

184 ~~[(M)]~~ (N) endangerment of a child or vulnerable adult, Section 76-5-112.5;

185 ~~[(N)]~~ (O) criminal homicide offenses under ~~[Title 76,]~~ Chapter 5, Part 2, Criminal

186 Homicide;

187 ~~[(O)]~~ (P) kidnapping, child kidnapping, and aggravated kidnapping under ~~[Title 76,]~~

188 Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

189 ~~[(P)]~~ (Q) rape, Section 76-5-402;

190 ~~[(Q)]~~ (R) rape of a child, Section 76-5-402.1;

191 ~~[(R)]~~ (S) object rape, Section 76-5-402.2;

192 ~~[(S)]~~ (T) object rape of a child, Section 76-5-402.3;

193 ~~[(T)]~~ (U) forcible sodomy, Section 76-5-403;

194 ~~[(U)]~~ (V) sodomy on a child, Section 76-5-403.1;

195 ~~[(V)]~~ (W) forcible sexual abuse, Section 76-5-404;

196 ~~[(W)]~~ (X) aggravated sexual abuse of a child or sexual abuse of a child, Section

197 76-5-404.1;

198 ~~[(X)]~~ (Y) aggravated sexual assault, Section 76-5-405;

199 ~~[(Y)]~~ (Z) sexual exploitation of a minor, Section 76-5b-201;

200 ~~[(Z)]~~ (AA) sexual exploitation of a vulnerable adult, Section 76-5b-202;

201 ~~[(AA)]~~ (BB) aggravated burglary and burglary of a dwelling under ~~[Title 76,]~~ Chapter

202 6, Part 2, Burglary and Criminal Trespass;

203 ~~[(BB)]~~ (CC) aggravated robbery and robbery under ~~[Title 76,]~~ Chapter 6, Part 3,

204 Robbery;

205 ~~[(CC)]~~ (DD) theft by extortion under Subsection 76-6-406(2)(a) or (b);

206 ~~[(DD)]~~ (EE) tampering with a witness under Subsection 76-8-508(1);

207 ~~[(EE)]~~ (FF) retaliation against a witness, victim, or informant under Section

208 76-8-508.3;

209 ~~[(FF)]~~ (GG) tampering with a juror under Subsection 76-8-508.5(2)(c);

210 ~~[(GG)]~~ (HH) extortion to dismiss a criminal proceeding under Section 76-8-509 if by

211 any threat or by use of force theft by extortion has been committed pursuant to Subsections

212 76-6-406(2)(a), (b), and (i);

213 ~~[(HH)]~~ (II) possession, use, or removal of explosive, chemical, or incendiary devices

214 under Subsections 76-10-306(3) through (6);

215 ~~[(H)]~~ (JJ) unlawful delivery of explosive, chemical, or incendiary devices under
216 Section 76-10-307;

217 ~~[(H)]~~ (KK) purchase or possession of a dangerous weapon or handgun by a restricted
218 person under Section 76-10-503;

219 ~~[(K)]~~ (LL) unlawful discharge of a firearm under Section 76-10-508;

220 ~~[(L)]~~ (MM) aggravated exploitation of prostitution under Subsection
221 76-10-1306(1)(a);

222 ~~[(M)]~~ (NN) bus hijacking under Section 76-10-1504; and

223 ~~[(N)]~~ (OO) discharging firearms and hurling missiles under Section 76-10-1505; or

224 (ii) any felony violation of a criminal statute of any other state, the United States, or
225 any district, possession, or territory of the United States which would constitute a violent
226 felony as defined in this Subsection (1) if committed in this state.

227 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
228 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
229 under this section, the penalty for a:

230 (a) third degree felony is as if the conviction were for a first degree felony;

231 (b) second degree felony is as if the conviction were for a first degree felony; or

232 (c) first degree felony remains the penalty for a first degree penalty except:

233 (i) the convicted person is not eligible for probation; and

234 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
235 habitual violent offender as an aggravating factor in determining the length of incarceration.

236 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
237 provide notice in the information or indictment that the defendant is subject to punishment as a
238 habitual violent offender under this section. Notice shall include the case number, court, and
239 date of conviction or commitment of any case relied upon by the prosecution.

240 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant
241 intends to deny that:

242 (A) the defendant is the person who was convicted or committed;

243 (B) the defendant was represented by counsel or had waived counsel; or

244 (C) the defendant's plea was understandingly or voluntarily entered.

245 (ii) The notice of denial shall be served not later than five days prior to trial and shall
246 state in detail the defendant's contention regarding the previous conviction and commitment.

247 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
248 a jury, the jury may not be told until after it returns its verdict on the underlying felony charge,
249 of the:

250 (i) defendant's previous convictions for violent felonies, except as otherwise provided
251 in the Utah Rules of Evidence; or

252 (ii) allegation against the defendant of being a habitual violent offender.

253 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
254 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
255 the jury, in which case the allegation shall be tried immediately to the court.

256 (c) (i) Before or at the time of sentencing the trier of fact shall determine if this section
257 applies.

258 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
259 and the defendant shall be afforded an opportunity to present any necessary additional
260 evidence.

261 (iii) Before sentencing under this section, the trier of fact shall determine whether this
262 section is applicable beyond a reasonable doubt.

263 (d) If any previous conviction and commitment is based upon a plea of guilty or no
264 contest, there is a rebuttable presumption that the conviction and commitment were regular and
265 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
266 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution
267 to establish by a preponderance of the evidence that the defendant was then represented by
268 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea
269 was understandingly and voluntarily entered.

270 (e) If the trier of fact finds this section applicable, the court shall enter that specific
271 finding on the record and shall indicate in the order of judgment and commitment that the
272 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced
273 under this section.

274 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the
275 provisions of this section.

276 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
 277 Subsection (1)(c) shall include any felony sexual offense violation of [~~Title 76;~~] Chapter 5, Part
 278 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

279 (6) The sentencing enhancement described in this section does not apply if:

280 (a) the offense for which the person is being sentenced is:

281 (i) a grievous sexual offense;

282 (ii) child kidnapping, Section 76-5-301.1;

283 (iii) aggravated kidnapping, Section 76-5-302; or

284 (iv) forcible sexual abuse, Section 76-5-404; and

285 (b) applying the sentencing enhancement provided for in this section would result in a
 286 lower maximum penalty than the penalty provided for under the section that describes the
 287 offense for which the person is being sentenced.

288 Section 6. Section **76-3-406** is amended to read:

289 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
 290 **offense, or hospitalization may not be granted.**

291 Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a,
 292 Commitment and Treatment of Persons with a Mental Illness, except as provided in Section
 293 76-5-406.5, probation [~~shall~~] may not be granted, the execution or imposition of sentence
 294 [~~shall~~] may not be suspended, the court [~~shall~~] may not enter a judgment for a lower category
 295 of offense, and hospitalization [~~shall~~] may not be ordered, the effect of which would in any way
 296 shorten the prison sentence for any person who commits a capital felony or a first degree felony
 297 involving:

298 (1) Section 76-5-109.5, aggravated child abuse and child torture;

299 [~~(1)~~] (2) Section 76-5-202, aggravated murder;

300 [~~(2)~~] (3) Section 76-5-203, murder;

301 [~~(3)~~] (4) Section 76-5-301.1, child kidnapping;

302 [~~(4)~~] (5) Section 76-5-302, aggravated kidnapping;

303 [~~(5)~~] (6) Section 76-5-402, rape, if the person is sentenced under Subsection
 304 76-5-402(3)(b), (3)(c), or (4);

305 [~~(6)~~] (7) Section 76-5-402.1, rape of a child;

306 [~~(7)~~] (8) Section 76-5-402.2, object rape, if the person is sentenced under Subsection

307 76-5-402.2 (1)(b), (1)(c), or (2);

308 ~~[(8)]~~ (9) Section 76-5-402.3, object rape of a child;

309 ~~[(9)]~~ (10) Section 76-5-403, forcible sodomy, if the person is sentenced under

310 Subsection 76-5-403(4)(b), (4)(c), or (5);

311 ~~[(10)]~~ (11) Section 76-5-403.1, sodomy on a child;

312 ~~[(11)]~~ (12) Section 76-5-404, forcible sexual abuse, if the person is sentenced under

313 Subsection 76-5-404(2)(b) or (3);

314 ~~[(12)]~~ (13) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;

315 ~~[(13)]~~ (14) Section 76-5-405, aggravated sexual assault; or

316 ~~[(14)]~~ (15) any attempt to commit a felony listed in Subsection ~~[(6), (8), or (10)]~~ (7),

317 (9), or (11).

318 Section 7. Section **76-4-102** is amended to read:

319 **76-4-102. Attempt -- Classification of offenses.**

320 (1) Criminal attempt to commit:

321 (a) a capital felony, or a felony punishable by imprisonment for life without parole, is a

322 first degree felony;

323 (b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second

324 degree felony;

325 (c) any of the following offenses is a first degree felony punishable by imprisonment

326 for an indeterminate term of not fewer than three years and which may be for life:

327 (i) murder, Subsection 76-5-203(2)(a);

328 (ii) child kidnapping, Section 76-5-301.1; ~~[or]~~

329 (iii) except as provided in Subsection (1)(d), any of the felonies described in Title 76,

330 Chapter 5, Part 4, Sexual Offenses, that are first degree felonies; or

331 (iv) aggravated child abuse and child torture, Section 76-5-109.5;

332 (d) except as provided in Subsection (2), any of the following offenses is a first degree

333 felony, punishable by a term of imprisonment of not less than 15 years and which may be for

334 life:

335 (i) rape of a child, Section 76-5-402.1;

336 (ii) object rape of a child, Section 76-5-402.3; or

337 (iii) sodomy on a child, Section 76-5-403.1;

- 338 (e) a second degree felony is a third degree felony;
- 339 (f) a third degree felony is a class A misdemeanor;
- 340 (g) a class A misdemeanor is a class B misdemeanor;
- 341 (h) a class B misdemeanor is a class C misdemeanor; and
- 342 (i) a class C misdemeanor is punishable by a penalty not exceeding one half the penalty
- 343 for a class C misdemeanor.

344 (2) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser
345 term than the term described in Subsection (1)(d) is in the interests of justice and states the
346 reasons for this finding on the record, the court may impose a term of imprisonment of not less
347 than:

- 348 (a) 10 years and which may be for life;
- 349 (b) six years and which may be for life; or
- 350 (c) three years and which may be for life.

351 Section 8. Section **76-5-109** is amended to read:

352 **76-5-109. Child abuse -- Child abandonment.**

353 (1) As used in this section:

- 354 (a) "Child" means a human being who is under 18 years of age.
- 355 (b) (i) "Child abandonment" means that a parent or legal guardian of a child:
 - 356 (A) intentionally ceases to maintain physical custody of the child;
 - 357 (B) intentionally fails to make reasonable arrangements for the safety, care, and
 - 358 physical custody of the child; and
 - 359 (C) (I) intentionally fails to provide the child with food, shelter, or clothing;
 - 360 (II) manifests an intent to permanently not resume physical custody of the child; or
 - 361 (III) for a period of at least 30 days:
 - 362 (Aa) intentionally fails to resume physical custody of the child; and
 - 363 (Bb) fails to manifest a genuine intent to resume physical custody of the child.
- 364 (ii) "Child abandonment" does not include:
 - 365 (A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or
 - 366 (B) giving legal consent to a court order for termination of parental rights:
 - 367 (I) in a legal adoption proceeding; or
 - 368 (II) in a case where a petition for the termination of parental rights, or the termination

369 of a guardianship, has been filed.

370 (c) "Child abuse" means any offense described in Subsection (2)[;] or (3)[; ~~or (4)~~] or in
371 Section 76-5-109.1.

372 (d) "Enterprise" is as defined in Section 76-10-1602.

373 (e) "Physical injury" means an injury to or condition of a child which impairs the
374 physical condition of the child, including:

375 (i) a bruise or other contusion of the skin;

376 (ii) a minor laceration or abrasion;

377 (iii) failure to thrive or malnutrition; or

378 (iv) any other condition which imperils the child's health or welfare and which is not a
379 serious physical injury as defined in [~~Subsection (1)(f)~~] Section 76-5-109.5.

380 [~~(f) (i) "Serious physical injury" means any physical injury or set of injuries that:]~~

381 [~~(A) seriously impairs the child's health;]~~

382 [~~(B) involves physical torture;]~~

383 [~~(C) causes serious emotional harm to the child; or]~~

384 [~~(D) involves a substantial risk of death to the child.]~~

385 [~~(ii) "Serious physical injury" includes:]~~

386 [~~(A) fracture of any bone or bones;]~~

387 [~~(B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
388 shaking, or causing the child's head to impact with an object or surface;]~~

389 [~~(C) any burn, including burns inflicted by hot water, or those caused by placing a hot
390 object upon the skin or body of the child;]~~

391 [~~(D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;]~~

392 [~~(E) any combination of two or more physical injuries inflicted by the same person,
393 either at the same time or on different occasions;]~~

394 [~~(F) any damage to internal organs of the body;]~~

395 [~~(G) any conduct toward a child that results in severe emotional harm, severe
396 developmental delay or intellectual disability, or severe impairment of the child's ability to
397 function;]~~

398 [~~(H) any injury that creates a permanent disfigurement or protracted loss or impairment
399 of the function of a bodily member, limb, or organ;]~~

400 ~~[(I) any conduct that causes a child to cease breathing, even if resuscitation is~~
401 ~~successful following the conduct; or]~~

402 ~~[(J) any conduct that results in starvation or failure to thrive or malnutrition that~~
403 ~~jeopardizes the child's life.]~~

404 ~~[(2) Any person who inflicts upon a child serious physical injury or, having the care or~~
405 ~~custody of such child, causes or permits another to inflict serious physical injury upon a child is~~
406 ~~guilty of an offense as follows:]~~

407 ~~[(a) if done intentionally or knowingly, the offense is a felony of the second degree;]~~

408 ~~[(b) if done recklessly, the offense is a felony of the third degree; or]~~

409 ~~[(c) if done with criminal negligence, the offense is a class A misdemeanor.]~~

410 ~~[(3)]~~ (2) Any person who inflicts upon a child physical injury or, having the care or
411 custody of ~~[such]~~ the child, causes or permits another to inflict physical injury upon a child is
412 guilty of an offense as follows:

413 (a) if done intentionally or knowingly, the offense is a ~~[class A misdemeanor]~~ third
414 degree felony;

415 (b) if done recklessly, the offense is a class ~~[B]~~ A misdemeanor; or

416 (c) if done with criminal negligence, the offense is a class ~~[C]~~ B misdemeanor.

417 ~~[(4)]~~ (3) A person who commits child abandonment, or encourages or causes another to
418 commit child abandonment, or an enterprise that encourages, commands, or causes another to
419 commit child abandonment, is:

420 (a) except as provided in Subsection ~~[(4)]~~ (3)(b), guilty of a third degree felony ~~[of the~~
421 ~~third degree]~~; or

422 (b) guilty of a second degree felony ~~[of the second degree]~~, if, as a result of the child
423 abandonment:

424 (i) the child suffers a serious physical injury; or

425 (ii) the person or enterprise receives, directly or indirectly, any benefit.

426 ~~[(5)]~~ (4) (a) In addition to the penalty described in Subsection ~~[(4)]~~ (3)(b), the court
427 may order the person or enterprise described in Subsection ~~[(4)]~~ (3)(b)(ii) to pay the costs of
428 investigating and prosecuting the offense and the costs of securing any forfeiture provided for
429 under Subsection ~~[(5)]~~ (4)(b).

430 (b) Any tangible or pecuniary benefit received under Subsection ~~[(4)]~~ (3)(b)(ii) is

431 subject to criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture
432 Procedures Act.

433 ~~[(6)]~~ (5) A parent or legal guardian who provides a child with treatment by spiritual
434 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
435 practices of an established church or religious denomination of which the parent or legal
436 guardian is a member or adherent ~~[shall]~~ is not, for that reason alone, ~~[be]~~ considered to have
437 committed an offense under this section.

438 ~~[(7)]~~ (6) A parent or guardian of a child does not violate this section by selecting a
439 treatment option for the medical condition of the child, if the treatment option is one that a
440 reasonable parent or guardian would believe to be in the best interest of the child.

441 ~~[(8)]~~ (7) A person is not guilty of an offense under this section for conduct that
442 constitutes:

443 (a) reasonable discipline or management of a child, including withholding privileges;

444 (b) conduct described in Section 76-2-401; or

445 (c) the use of reasonable and necessary physical restraint or force on a child:

446 (i) in self-defense;

447 (ii) in defense of others;

448 (iii) to protect the child; or

449 (iv) to remove a weapon in the possession of a child for any of the reasons described in

450 Subsections ~~[(8)]~~ (7)(c)(i) through (iii).

451 Section 9. Section **76-5-109.5** is enacted to read:

452 **76-5-109.5. Aggravated child abuse and child torture -- Definitions -- Penalty.**

453 (1) As used in this section:

454 (a) "Abuse" means a cruel, inhumane, or malicious act committed under circumstances

455 that indicate a child's physical, mental, or emotional health is harmed or threatened, and

456 includes serious physical, mental, and emotional injury.

457 (b) "Child" means a human being who is younger than 18 years of age, and does not

458 include an unborn child.

459 (c) (i) "Serious physical injury" means any intentionally inflicted physical injury as

460 defined in Section 76-5-109, or a set of these injuries:

461 (A) seriously impairs the child's health;

462 (B) involves physical torture, which means an intentional and depraved infliction of
463 extreme physical pain upon a child that is an act separate and apart from any other purpose; or

464 (C) involves a substantial risk of death to the child.

465 (ii) "Serious physical injury" includes:

466 (A) fracture of any bone or bones;

467 (B) intracranial bleeding, swelling, or contusion of the brain;

468 (C) subdural or subarachnoid bleeding, retinal hemorrhage, or cerebral edema;

469 (D) any second or third degree burn, including burns inflicted by hot water, and burns
470 caused by placing a hot object upon the skin or body of any child or in close enough proximity
471 to the child to cause a second or third degree burn;

472 (E) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

473 (F) any combination of two or more physical injuries, as defined in Section 76-5-109,
474 that are inflicted by the same actor, either at the same time or on different occasions;

475 (G) any damage to internal organs of the body;

476 (H) any conduct toward a child that results in severe emotional harm, severe
477 developmental delay or intellectual disability, or severe impairment of the child's ability to
478 function;

479 (I) any injury that creates a permanent disfigurement or protracted loss or impairment
480 of the function of a bodily member, limb, or organ;

481 (J) any conduct that causes the child to cease breathing, even if resuscitation is
482 successful following the conduct; or

483 (K) any conduct that results in starvation, failure to thrive, or malnutrition that
484 jeopardizes the child's life.

485 (d) "Serious mental or emotional injury" means the intentional infliction of any mental
486 or emotional injury or torture that:

487 (i) seriously impairs the child's health;

488 (ii) causes serious emotional or mental harm to the child;

489 (iii) is the intentional and depraved infliction of extreme mental or emotional pain
490 upon a child that is separate and apart from any other purpose; or

491 (iv) any conduct toward a child that results in severe emotional harm, severe
492 developmental delay or intellectual disability, or severe impairment of the child's ability to

493 function, including cruel confinement such as caging or chaining.

494 (e) "Serious mental or emotional injury" or "serious physical injury" does not include:

495 (i) reasonable discipline or management of a child, including withholding privileges;

496 (ii) conduct described in Section 76-2-401; or

497 (iii) the use of reasonable and necessary physical restraint or force on a child:

498 (A) in self-defense;

499 (B) in defense of others;

500 (C) to protect the child; or

501 (D) to remove a weapon in the possession of a child for any of the reasons described in
502 Subsections (1)(e)(iii)(A), (B), and (C).

503 (f) "Torture" means an intentional and depraved infliction of extreme physical pain
504 upon a child that is an act separate and apart from an act conducted for any other purpose.

505 (2) Any person who inflicts upon a child serious physical injury or serious mental or
506 emotional injury is guilty of the offense of aggravated child abuse and child torture, which is a
507 first degree felony punishable by a term of imprisonment of not less than 10 years and which
508 may be for life.

509 (3) Any person who, having the care or custody of the child, causes or permits another
510 individual to inflict serious physical injury or mental or emotional injury upon a child is guilty
511 of aiding and abetting the commission of aggravated child abuse and child torture, which is a
512 first degree felony punishable by a term of imprisonment of not less than 10 years and which
513 may be for life.

514 (4) (a) Any person who, having the care or custody of the child, becomes aware or has
515 reason to believe that another individual has inflicted serious physical or mental or emotional
516 injury upon a child, shall report that information to the Division of Child and Family Services
517 or the local law enforcement agency within 48 hours of becoming aware of the information.

518 (b) Notwithstanding the provisions of Section 62A-4a-411, failure to report an incident
519 of aggravated child abuse and child torture is a class A misdemeanor. If a person is convicted
520 of a second or subsequent failure to report, failure to report under this Subsection (4) is a third
521 degree felony.

522 (c) If the period prescribed in Section 76-1-302 has expired, a prosecution may
523 nevertheless be commenced within one year after the discovery by law enforcement of the

524 failure to report.

525 (5) Any person who is convicted of committing aggravated child abuse and child
526 torture upon more than one child shall serve each sentence consecutively.

527 Section 10. Section **76-5-202** is amended to read:

528 **76-5-202. Aggravated murder.**

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

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

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

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

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

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

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

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

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

- 555 (i) the actor previously committed or was convicted of:
- 556 (i) aggravated murder under this section;
- 557 (ii) attempted aggravated murder under this section;
- 558 (iii) murder, Section 76-5-203;
- 559 (iv) attempted murder, Section 76-5-203; or
- 560 (v) an offense committed in another jurisdiction which if committed in this state would
- 561 be a violation of a crime listed in this Subsection (1)(i);
- 562 (j) the actor was previously convicted of:
- 563 (i) aggravated assault, Subsection 76-5-103(2);
- 564 (ii) mayhem, Section 76-5-105;
- 565 (iii) kidnapping, Section 76-5-301;
- 566 (iv) child kidnapping, Section 76-5-301.1;
- 567 (v) aggravated kidnapping, Section 76-5-302;
- 568 (vi) rape, Section 76-5-402;
- 569 (vii) rape of a child, Section 76-5-402.1;
- 570 (viii) object rape, Section 76-5-402.2;
- 571 (ix) object rape of a child, Section 76-5-402.3;
- 572 (x) forcible sodomy, Section 76-5-403;
- 573 (xi) sodomy on a child, Section 76-5-403.1;
- 574 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 575 (xiii) aggravated sexual assault, Section 76-5-405;
- 576 (xiv) aggravated arson, Section 76-6-103;
- 577 (xv) aggravated burglary, Section 76-6-203;
- 578 (xvi) aggravated robbery, Section 76-6-302;
- 579 (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- 580 (xviii) an offense committed in another jurisdiction which if committed in this state
- 581 would be a violation of a crime listed in this Subsection (1)(j);
- 582 (k) the homicide was committed for the purpose of:
- 583 (i) preventing a witness from testifying;
- 584 (ii) preventing a person from providing evidence or participating in any legal
- 585 proceedings or official investigation;

586 (iii) retaliating against a person for testifying, providing evidence, or participating in
587 any legal proceedings or official investigation; or

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

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

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

597 (n) the homicide was committed:

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

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

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

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

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

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

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

616 (t) the victim, at the time of the death of the victim:

617 (i) was younger than 14 years of age; and

618 (ii) was not an unborn child.

619 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless
620 indifference to human life, causes the death of another incident to an act, scheme, course of
621 conduct, or criminal episode during which the actor is a major participant in the commission or
622 attempted commission of:

623 (a) child abuse, [~~Subsection~~] Section 76-5-109[(2)(a)];

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

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

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

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

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

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

631 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder
632 is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

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

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

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

642 (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted
643 aggravated murder that the defendant caused the death of another or attempted to cause the
644 death of another under a reasonable belief that the circumstances provided a legal justification
645 or excuse for the conduct although the conduct was not legally justifiable or excusable under
646 the existing circumstances.

647 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from

648 the viewpoint of a reasonable person under the then existing circumstances.

649 (c) This affirmative defense reduces charges only as follows:

650 (i) aggravated murder to murder; and

651 (ii) attempted aggravated murder to attempted murder.

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

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

657 Section 11. Section **76-5-203** is amended to read:

658 **76-5-203. Murder.**

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

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

661 (b) child abuse, under [~~Subsection~~] Section 76-5-109[~~(2)~~(a)], when the victim is
662 younger than 18 years of age;

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

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

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

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

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

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

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

670 (j) sexual abuse of a child or aggravated sexual abuse of a child under Section
671 76-5-404.1;

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

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

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

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

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

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

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

- 679 (r) aggravated burglary under Section 76-6-203;
680 (s) robbery under Section 76-6-301;
681 (t) aggravated robbery under Section 76-6-302;
682 (u) escape or aggravated escape under Section 76-8-309; or
683 (v) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a
684 firearm or dangerous weapon.
- 685 (2) Criminal homicide constitutes murder if:
686 (a) the actor intentionally or knowingly causes the death of another;
687 (b) intending to cause serious bodily injury to another, the actor commits an act clearly
688 dangerous to human life that causes the death of another;
689 (c) acting under circumstances evidencing a depraved indifference to human life, the
690 actor knowingly engages in conduct which creates a grave risk of death to another and thereby
691 causes the death of another;
- 692 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
693 flight from the commission or attempted commission of any predicate offense, or is a party to
694 the predicate offense;
695 (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of
696 the commission, attempted commission, or immediate flight from the commission or attempted
697 commission of any predicate offense; and
698 (iii) the actor acted with the intent required as an element of the predicate offense;
- 699 (e) the actor recklessly causes the death of a peace officer or military service member
700 in uniform while in the commission or attempted commission of:
701 (i) an assault against a peace officer under Section 76-5-102.4;
702 (ii) interference with a peace officer while making a lawful arrest under Section
703 76-8-305 if the actor uses force against a peace officer; or
704 (iii) an assault against a military service member in uniform under Section 76-5-102.4;
- 705 (f) commits a homicide which would be aggravated murder, but the offense is reduced
706 pursuant to Subsection 76-5-202(4); or
707 (g) the actor commits aggravated murder, but special mitigation is established under
708 Section 76-5-205.5.
- 709 (3) (a) Murder is a first degree felony.

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

712 (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the
713 defendant caused the death of another or attempted to cause the death of another under a
714 reasonable belief that the circumstances provided a legal justification or excuse for the conduct
715 although the conduct was not legally justifiable or excusable under the existing circumstances.

716 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
717 the viewpoint of a reasonable person under the then existing circumstances.

718 (c) This affirmative defense reduces charges only from:

719 (i) murder to manslaughter; and

720 (ii) attempted murder to attempted manslaughter.

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

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

726 Section 12. Section **76-5-208** is amended to read:

727 **76-5-208. Child abuse homicide.**

728 (1) Criminal homicide constitutes child abuse homicide if, under circumstances not
729 amounting to aggravated murder, as described in Section 76-5-202, the actor causes the death
730 of a person under 18 years of age and the death results from child abuse, as defined in
731 ~~[Subsection]~~ Section 76-5-109~~(1)~~:

732 (a) if the child abuse is done recklessly under ~~[Subsection]~~ Section 76-5-109~~(2)(b)~~;

733 (b) if the child abuse is done with criminal negligence under ~~[Subsection]~~ Section
734 76-5-109~~(2)(c)~~; or

735 (c) if, under circumstances not amounting to the type of child abuse homicide
736 described in Subsection (1)(a), the child abuse is done intentionally, knowingly, recklessly, or
737 with criminal negligence, under ~~[Subsection]~~ Section 76-5-109~~(3)(a), (b), or (c)~~.

738 (2) Child abuse homicide as described in Subsection (1)(a) is a first degree felony.

739 (3) Child abuse homicide as described in Subsections (1)(b) and (c) is a second degree
740 felony.

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