

AGGRAVATED MURDER AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Paul Ray

LONG TITLE

Committee Note:

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

General Description:

This bill clarifies and makes additions to the designation of aggravated murder victims.

Highlighted Provisions:

This bill:

▶ adds correctional officers, special function officers, search and rescue personnel, emergency medical personnel, ambulance personnel, and security officers to the list of potential aggravated murder victims; and

▶ clarifies that all peace officers and emergency responders as defined in Utah Code are also to be designated as potential victims of aggravated murder.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-202, as last amended by Laws of Utah 2017, Chapter 454

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



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

29 **76-5-202. Aggravated murder.**

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

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

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

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

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

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

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

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

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

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

57 (i) aggravated murder under this section;

58 (ii) attempted aggravated murder under this section;

- 59 (iii) murder, Section 76-5-203;
- 60 (iv) attempted murder, Section 76-5-203; or
- 61 (v) an offense committed in another jurisdiction which if committed in this state would
- 62 be a violation of a crime listed in this Subsection (1)(i);
- 63 (j) the actor was previously convicted of:
- 64 (i) aggravated assault, Subsection 76-5-103(2);
- 65 (ii) mayhem, Section 76-5-105;
- 66 (iii) kidnapping, Section 76-5-301;
- 67 (iv) child kidnapping, Section 76-5-301.1;
- 68 (v) aggravated kidnapping, Section 76-5-302;
- 69 (vi) rape, Section 76-5-402;
- 70 (vii) rape of a child, Section 76-5-402.1;
- 71 (viii) object rape, Section 76-5-402.2;
- 72 (ix) object rape of a child, Section 76-5-402.3;
- 73 (x) forcible sodomy, Section 76-5-403;
- 74 (xi) sodomy on a child, Section 76-5-403.1;
- 75 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 76 (xiii) aggravated sexual assault, Section 76-5-405;
- 77 (xiv) aggravated arson, Section 76-6-103;
- 78 (xv) aggravated burglary, Section 76-6-203;
- 79 (xvi) aggravated robbery, Section 76-6-302;
- 80 (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- 81 (xviii) an offense committed in another jurisdiction which if committed in this state
- 82 would be a violation of a crime listed in this Subsection (1)(j);
- 83 (k) the homicide was committed for the purpose of:
- 84 (i) preventing a witness from testifying;
- 85 (ii) preventing a person from providing evidence or participating in any legal
- 86 proceedings or official investigation;
- 87 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 88 any legal proceedings or official investigation; or
- 89 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;

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

93 (m) the victim is ~~[or has been a peace officer,]~~ on duty in a verified position or the
94 homicide is based on, is caused by, or is related to the victim's position, and the actor knew, or
95 reasonably should have known, that the victim holds or has held the position of:

96 (i) a law enforcement officer, correctional officer, special function officer, or any other
97 peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications;

98 (ii) an executive officer, prosecuting officer, jailer, or prison official[-];

99 (iii) a firefighter, search and rescue personnel, emergency medical personnel,
100 ambulance personnel, or any other emergency responder as defined in Section [53-2b-102](#);

101 (iv) a judge or other court official, juror, probation officer, or parole officer[-~~and the~~
102 ~~victim is either on duty or the homicide is based on, is caused by, or is related to that official~~
103 ~~position, and the actor knew, or reasonably should have known, that the victim holds or has~~
104 ~~held that official position~~]; or

105 (v) a security officer contracted to secure, guard, or otherwise protect tangible personal
106 property, real property, or the life and well-being of human or animal life in the area of the
107 offense;

108 (n) the homicide was committed:

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

112 (ii) by means of any weapon of mass destruction as defined in Section [76-10-401](#); or

113 (iii) to target a law enforcement officer as defined in Section [76-5-210](#);

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

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

- 121 (q) the victim was a person held or otherwise detained as a shield, hostage, or for
122 ransom;
- 123 (r) the homicide was committed in an especially heinous, atrocious, cruel, or
124 exceptionally depraved manner, any of which must be demonstrated by physical torture, serious
125 physical abuse, or serious bodily injury of the victim before death;
- 126 (s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or
127 after death, in a manner demonstrating the actor's depravity of mind; or
- 128 (t) the victim, at the time of the death of the victim:
- 129 (i) was younger than 14 years of age; and
130 (ii) was not an unborn child.
- 131 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless
132 indifference to human life, causes the death of another incident to an act, scheme, course of
133 conduct, or criminal episode during which the actor is a major participant in the commission or
134 attempted commission of:
- 135 (a) child abuse, Subsection [76-5-109\(2\)\(a\)](#);
136 (b) child kidnapping, Section [76-5-301.1](#);
137 (c) rape of a child, Section [76-5-402.1](#);
138 (d) object rape of a child, Section [76-5-402.3](#);
139 (e) sodomy on a child, Section [76-5-403.1](#); or
140 (f) sexual abuse or aggravated sexual abuse of a child, Section [76-5-404.1](#).
- 141 (3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder
142 is a capital felony.
- 143 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder
144 is a noncapital first degree felony punishable as provided in Section [76-3-207.7](#).
- 145 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice
146 of intent to seek the death penalty. The notice shall be served on the defendant or defense
147 counsel and filed with the court.
- 148 (ii) Notice of intent to seek the death penalty may be served and filed more than 60
149 days after the arraignment upon written stipulation of the parties or upon a finding by the court
150 of good cause.
- 151 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to

152 noncapital first degree felony aggravated murder during the period in which the prosecutor may
153 file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

154 (e) If the defendant was younger than 18 years of age at the time the offense was
155 committed, aggravated murder is a noncapital first degree felony punishable as provided in
156 Section [76-3-207.7](#).

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

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

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

165 (i) aggravated murder to murder; and

166 (ii) attempted aggravated murder to attempted murder.

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

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