

**DEATH PENALTY MODIFICATIONS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: Daniel McCay

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**LONG TITLE**

**General Description:**

This bill modifies the penalty for the offense of aggravated murder.

**Highlighted Provisions:**

This bill:

- ▶ adds a possible sentence for aggravated murder of 45 years to life;
- ▶ prohibits the state from seeking the death penalty for aggravated murder committed before May 4, 2022, unless the state filed the notice of intent to seek the death penalty before that date; and
- ▶ prohibits the state from seeking the death penalty for aggravated murder committed after May 4, 2022.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-3-207.7**, as last amended by Laws of Utah 2016, Chapter 277

**76-5-202**, as last amended by Laws of Utah 2018, Chapter 343

**77-20-201**, as enacted by Laws of Utah 2021, Second Special Session, Chapter 4



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

29 Section 1. Section 76-3-207.7 is amended to read:

30 **76-3-207.7. First degree felony aggravated murder -- Noncapital felony --**

31 **Penalties -- Sentenced by court.**

32 (1) A person who has pled guilty to or been convicted of first degree felony aggravated  
33 murder under Section 76-5-202 shall be sentenced by the court.

34 (2) (a) The sentence under this section shall be:

35 (i) life in prison without parole;

36 (ii) an indeterminate prison term of not less than 45 years and that may be for life; or

37 ~~[(ii)]~~ (iii) an indeterminate prison term of not less than 25 years and that may be for  
38 life.

39 (b) ~~[Subsection (2)(a)(i) does]~~ Subsections (2)(a)(i) and (2)(a)(ii) do not apply if the  
40 person was younger than 18 years [of age] old at the time the offense was committed and was  
41 sentenced on or after May 10, 2016.

42 Section 2. Section 76-5-202 is amended to read:

43 **76-5-202. Aggravated murder.**

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

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

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

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

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

59 kidnapping;

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

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

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

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

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

71 (i) aggravated murder under this section;

72 (ii) attempted aggravated murder under this section;

73 (iii) murder, Section 76-5-203;

74 (iv) attempted murder, Section 76-5-203; or

75 (v) an offense committed in another jurisdiction which if committed in this state would  
76 be a violation of a crime listed in this Subsection (1)(i);

77 (j) the actor was previously convicted of:

78 (i) aggravated assault, Subsection 76-5-103(2);

79 (ii) mayhem, Section 76-5-105;

80 (iii) kidnapping, Section 76-5-301;

81 (iv) child kidnapping, Section 76-5-301.1;

82 (v) aggravated kidnapping, Section 76-5-302;

83 (vi) rape, Section 76-5-402;

84 (vii) rape of a child, Section 76-5-402.1;

85 (viii) object rape, Section 76-5-402.2;

86 (ix) object rape of a child, Section 76-5-402.3;

87 (x) forcible sodomy, Section 76-5-403;

88 (xi) sodomy on a child, Section 76-5-403.1;

89 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;

- 90 (xiii) aggravated sexual assault, Section 76-5-405;
- 91 (xiv) aggravated arson, Section 76-6-103;
- 92 (xv) aggravated burglary, Section 76-6-203;
- 93 (xvi) aggravated robbery, Section 76-6-302;
- 94 (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- 95 (xviii) an offense committed in another jurisdiction which if committed in this state
- 96 would be a violation of a crime listed in this Subsection (1)(j);
- 97 (k) the homicide was committed for the purpose of:
- 98 (i) preventing a witness from testifying;
- 99 (ii) preventing a person from providing evidence or participating in any legal
- 100 proceedings or official investigation;
- 101 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 102 any legal proceedings or official investigation; or
- 103 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 104 (l) the victim is or has been a local, state, or federal public official, or a candidate for
- 105 public office, and the homicide is based on, is caused by, or is related to that official position,
- 106 act, capacity, or candidacy;
- 107 (m) the victim is on duty in a verified position or the homicide is based on, is caused
- 108 by, or is related to the victim's position, and the actor knew, or reasonably should have known,
- 109 that the victim holds or has held the position of:
- 110 (i) a law enforcement officer, correctional officer, special function officer, or any other
- 111 peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications;
- 112 (ii) an executive officer, prosecuting officer, jailer, or prison official;
- 113 (iii) a firefighter, search and rescue personnel, emergency medical personnel,
- 114 ambulance personnel, or any other emergency responder as defined in Section 53-2b-102;
- 115 (iv) a judge or other court official, juror, probation officer, or parole officer; or
- 116 (v) a security officer contracted to secure, guard, or otherwise protect tangible personal
- 117 property, real property, or the life and well-being of human or animal life in the area of the
- 118 offense;
- 119 (n) the homicide was committed:
- 120 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar

121 device which was planted, hidden, or concealed in any place, area, dwelling, building, or  
122 structure, or was mailed or delivered;

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

124 (iii) to target a law enforcement officer as defined in Section 76-5-210;

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

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

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

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

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

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

140 (i) was younger than 14 years [~~of age~~] old; and

141 (ii) was not an unborn child.

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

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

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

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

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

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

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

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

154 (b) [~~H~~] Except as provided in Subsection (3)(f), if a notice of intent to seek the death  
155 penalty has not been filed, aggravated murder is a noncapital first degree felony punishable as  
156 provided in Section 76-3-207.7.

157 (c) (i) [~~Within~~] Except as provided in Subsection (3)(f), within 60 days after  
158 arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty.  
159 The notice shall be served on the defendant or defense counsel and filed with the court.

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

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

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

169 (f) (i) The state may not seek the death penalty for an aggravated murder offense  
170 committed before May 4, 2022, unless, before May 4, 2022, the state files a notice of intent to  
171 seek the death penalty for the offense.

172 (ii) The state may not seek the death penalty for an aggravated murder offense  
173 committed after May 4, 2022.

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

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

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

182 (i) aggravated murder to murder; and

183 (ii) attempted aggravated murder to attempted murder.

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

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

189 Section 3. Section **77-20-201** is amended to read:

190 **77-20-201. Right to bail -- Capital felony.**

191 (1) An individual charged with, or arrested for, a criminal offense shall be admitted to  
192 bail as a matter of right, except if the individual is charged with:

193 (a) a capital felony when the court finds there is substantial evidence to support the  
194 charge;

195 (b) a felony committed while on parole or on probation for a felony conviction, or  
196 while free on bail awaiting trial on a previous felony charge, when the court finds there is  
197 substantial evidence to support the current felony charge;

198 (c) a felony when there is substantial evidence to support the charge and the court  
199 finds, by clear and convincing evidence, that the individual would constitute a substantial  
200 danger to any other individual or to the community, or is likely to flee the jurisdiction of the  
201 court, if released on bail;

202 (d) a felony when the court finds there is substantial evidence to support the charge and  
203 the court finds, by clear and convincing evidence, that the individual violated a material  
204 condition of release while previously on bail;

205 (e) a domestic violence offense if the court finds:

206 (i) that there is substantial evidence to support the charge; and

207 (ii) by clear and convincing evidence, that the individual would constitute a substantial  
208 danger to an alleged victim of domestic violence if released on bail;

209 (f) the offense of driving under the influence or driving with a measurable controlled  
210 substance in the body if:

211 (i) the offense results in death or serious bodily injury to an individual; and

212 (ii) the court finds:

213 (A) that there is substantial evidence to support the charge; and

214 (B) by clear and convincing evidence, that the person would constitute a substantial  
215 danger to the community if released on bail; or

216 (g) a felony violation of Section 76-9-101 if there is substantial evidence to support the  
217 charge and the court finds, by clear and convincing evidence, that the individual is not likely to  
218 appear for a subsequent court appearance.

219 (2) Notwithstanding any other provision of this section, there is a rebuttable  
220 presumption that an individual is a substantial danger to the community under Subsection  
221 (1)(f)(ii)(B):

222 (a) as long as the individual has a blood or breath alcohol concentration of .05 grams or  
223 greater if the individual is arrested for, or charged with, the offense of driving under the  
224 influence and the offense resulted in death or serious bodily injury to an individual; or

225 (b) if the individual has a measurable amount of controlled substance in the  
226 individual's body, the individual is arrested for, or charged with, the offense of driving with a  
227 measurable controlled substance in the body and the offense resulted in death or serious bodily  
228 injury to an individual.

229 (3) For purposes of Subsection (1)(a), any arrest or charge for a violation of Section  
230 76-5-202, aggravated murder, is a capital felony unless:

231 (a) the prosecuting attorney files a notice of intent to not seek the death penalty; [~~or~~]

232 (b) the time for filing a notice to seek the death penalty has expired and the prosecuting  
233 attorney has not filed a notice to seek the death penalty[:]; or

234 (c) the offense was committed after May 4, 2022.