

DEATH PENALTY AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Criminal Code regarding aggravated murder as a capital felony.

Highlighted Provisions:

This bill:

▶ prohibits the state from seeking the death penalty for aggravated murder committed before May 8, 2018, unless the state filed the notice of intent to seek the death penalty before May 8, 2018; and

▶ prohibits the state from seeking the death penalty for aggravated murder committed after May 7, 2018.

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

77-20-1, as last amended by Laws of Utah 2017, Chapters 289, 311, and 332

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

98 (n) the homicide was committed:

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

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

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

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, at the time of the death of the victim:

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

120 (ii) was not an unborn child.

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

- 125 (a) child abuse, Subsection 76-5-109(2)(a);
- 126 (b) child kidnapping, Section 76-5-301.1;
- 127 (c) rape of a child, Section 76-5-402.1;
- 128 (d) object rape of a child, Section 76-5-402.3;
- 129 (e) sodomy on a child, Section 76-5-403.1; or
- 130 (f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

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

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

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

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

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

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

148 (f) (i) The state may not seek the death penalty for an aggravated murder offense
149 committed before May 8, 2018, unless, before May 8, 2018, the state files the notice of intent
150 to seek the death penalty for the offense.

151 (ii) The state may not seek the death penalty for an aggravated murder offense

152 committed after May 7, 2018.

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

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

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

161 (i) aggravated murder to murder; and

162 (ii) attempted aggravated murder to attempted murder.

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

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

168 Section 2. Section 77-20-1 is amended to read:

169 **77-20-1. Right to bail -- Denial of bail -- Hearing.**

170 (1) As used in this chapter:

171 (a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

172 (b) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

173 (c) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

174 (2) A person charged with or arrested for a criminal offense shall be admitted to bail as
175 a matter of right, except if the person is charged with a:

176 (a) capital felony, when the court finds there is substantial evidence to support the
177 charge;

178 (b) felony committed while on probation or parole, or while free on bail awaiting trial
179 on a previous felony charge, when the court finds there is substantial evidence to support the
180 current felony charge;

181 (c) felony when there is substantial evidence to support the charge and the court finds
182 by clear and convincing evidence that the person would constitute a substantial danger to any

183 other person or to the community, or is likely to flee the jurisdiction of the court, if released on
184 bail; or

185 (d) felony when the court finds there is substantial evidence to support the charge and
186 it finds by clear and convincing evidence that the person violated a material condition of
187 release while previously on bail.

188 (3) Any person who may be admitted to bail may be released by written undertaking or
189 an equal amount of cash bail, or on the person's own recognizance, on condition that the person
190 appear in court for future court proceedings in the case, and on any other conditions imposed in
191 the discretion of the magistrate or court that will reasonably:

192 (a) ensure the appearance of the accused;

193 (b) ensure the integrity of the court process;

194 (c) prevent direct or indirect contact with witnesses or victims by the accused, if
195 appropriate; and

196 (d) ensure the safety of the public.

197 (4) (a) Except as otherwise provided, the initial order denying or fixing the amount of
198 bail shall be issued by the magistrate or court issuing the warrant of arrest.

199 (b) A magistrate may set bail upon determining that there was probable cause for a
200 warrantless arrest.

201 (c) A bail commissioner may set bail in a misdemeanor case in accordance with
202 Sections [10-3-920](#) and [17-32-1](#).

203 (d) A person arrested for a violation of a jail release agreement or jail release order
204 issued in accordance with Section [77-20-3.5](#):

205 (i) may not be released before the accused's first judicial appearance; and

206 (ii) may be denied bail by the court under Subsection [77-20-3.5](#)(9) or (11).

207 (5) The magistrate or court may rely upon information contained in:

208 (a) the indictment or information;

209 (b) any sworn probable cause statement;

210 (c) information provided by any pretrial services agency; or

211 (d) any other reliable record or source.

212 (6) (a) A motion to modify the initial order may be made by a party at any time upon
213 notice to the opposing party sufficient to permit the opposing party to prepare for hearing and

214 to permit any victim to be notified and be present.

215 (b) Hearing on a motion to modify may be held in conjunction with a preliminary
216 hearing or any other pretrial hearing.

217 (c) The magistrate or court may rely on information as provided in Subsection (5) and
218 may base its ruling on evidence provided at the hearing so long as each party is provided an
219 opportunity to present additional evidence or information relevant to bail.

220 (7) Subsequent motions to modify bail orders may be made only upon a showing that
221 there has been a material change in circumstances.

222 (8) An appeal may be taken from an order of any court denying bail to the Supreme
223 Court, which shall review the determination under Subsection (2).

224 (9) For purposes of this section, any arrest or charge for a violation of Section
225 [76-5-202](#), Aggravated murder, is a capital felony unless:

226 (a) the prosecutor files a notice of intent to not seek the death penalty; [~~or~~]

227 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
228 has not filed a notice to seek the death penalty[~~-~~]; or

229 (c) the offense was committed after May 7, 2018.

Legislative Review Note
Office of Legislative Research and General Counsel