

DEATH PENALTY MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

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 to 45 years of 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
- 77-20-1**, as last amended by Laws of Utah 2021, Chapters 88, 94, 431 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 431

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

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

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

Penalties -- Sentenced by court.

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

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

34 (i) life in prison without parole;

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

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

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

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

41 **76-5-202. Aggravated murder.**

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

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

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

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

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

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

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

- 64 (g) the homicide was committed for pecuniary gain;
- 65 (h) the defendant committed, or engaged or employed another person to commit the
66 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration
67 for commission of the homicide;
- 68 (i) the actor previously committed or was convicted of:
- 69 (i) aggravated murder under this section;
- 70 (ii) attempted aggravated murder under this section;
- 71 (iii) murder, Section 76-5-203;
- 72 (iv) attempted murder, Section 76-5-203; or
- 73 (v) an offense committed in another jurisdiction which if committed in this state would
74 be a violation of a crime listed in this Subsection (1)(i);
- 75 (j) the actor was previously convicted of:
- 76 (i) aggravated assault, Subsection 76-5-103(2);
- 77 (ii) mayhem, Section 76-5-105;
- 78 (iii) kidnapping, Section 76-5-301;
- 79 (iv) child kidnapping, Section 76-5-301.1;
- 80 (v) aggravated kidnapping, Section 76-5-302;
- 81 (vi) rape, Section 76-5-402;
- 82 (vii) rape of a child, Section 76-5-402.1;
- 83 (viii) object rape, Section 76-5-402.2;
- 84 (ix) object rape of a child, Section 76-5-402.3;
- 85 (x) forcible sodomy, Section 76-5-403;
- 86 (xi) sodomy on a child, Section 76-5-403.1;
- 87 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 88 (xiii) aggravated sexual assault, Section 76-5-405;
- 89 (xiv) aggravated arson, Section 76-6-103;
- 90 (xv) aggravated burglary, Section 76-6-203;
- 91 (xvi) aggravated robbery, Section 76-6-302;
- 92 (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- 93 (xviii) an offense committed in another jurisdiction which if committed in this state
94 would be a violation of a crime listed in this Subsection (1)(j);

- 95 (k) the homicide was committed for the purpose of:
- 96 (i) preventing a witness from testifying;
- 97 (ii) preventing a person from providing evidence or participating in any legal
98 proceedings or official investigation;
- 99 (iii) retaliating against a person for testifying, providing evidence, or participating in
100 any legal proceedings or official investigation; or
- 101 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 102 (l) the victim is or has been a local, state, or federal public official, or a candidate for
103 public office, and the homicide is based on, is caused by, or is related to that official position,
104 act, capacity, or candidacy;
- 105 (m) the victim is on duty in a verified position or the homicide is based on, is caused
106 by, or is related to the victim's position, and the actor knew, or reasonably should have known,
107 that the victim holds or has held the position of:
- 108 (i) a law enforcement officer, correctional officer, special function officer, or any other
109 peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications;
- 110 (ii) an executive officer, prosecuting officer, jailer, or prison official;
- 111 (iii) a firefighter, search and rescue personnel, emergency medical personnel,
112 ambulance personnel, or any other emergency responder as defined in Section 53-2b-102;
- 113 (iv) a judge or other court official, juror, probation officer, or parole officer; or
- 114 (v) a security officer contracted to secure, guard, or otherwise protect tangible personal
115 property, real property, or the life and well-being of human or animal life in the area of the
116 offense;
- 117 (n) the homicide was committed:
- 118 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
119 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
120 structure, or was mailed or delivered;
- 121 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401; or
- 122 (iii) to target a law enforcement officer as defined in Section 76-5-210;
- 123 (o) the homicide was committed during the act of unlawfully assuming control of any
124 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any
125 valuable consideration for the release of the public conveyance or any passenger, crew

126 member, or any other person aboard, or to direct the route or movement of the public
127 conveyance or otherwise exert control over the public conveyance;

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

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

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

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

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

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

139 (ii) was not an unborn child.

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

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

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

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

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

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

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

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

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

155 (c) (i) [~~Within~~] Except as provided in Subsection (3)(f), within 60 days after
156 arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty.

157 The notice shall be served on the defendant or defense counsel and filed with the court.

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

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

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

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

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

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

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

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

180 (i) aggravated murder to murder; and

181 (ii) attempted aggravated murder to attempted murder.

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

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

187 Section 3. Section **77-20-1** is amended to read:

188 **77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing**
189 **-- Motion to modify.**

190 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

215 (ii) the court finds:

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

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

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

222 (3) (a) Any individual who may be admitted to bail may be released by posting bail in
223 the form and manner provided in Section 77-20-4, or on the individual's own recognizance, on
224 condition that the individual appear in court for future court proceedings in the case, and on
225 any other conditions imposed in the discretion of the magistrate or court in a pretrial status
226 order setting the terms and conditions of the individual's pretrial release that will reasonably:

227 (i) ensure the appearance of the accused;

228 (ii) ensure the integrity of the court process;

229 (iii) prevent direct or indirect contact with witnesses or victims by the accused, if
230 appropriate; and

231 (iv) ensure the safety of the public.

232 (b) An individual arrested for a violation of Subsection 76-9-101(4) may not be
233 released from custody before the individual appears before a magistrate or a judge.

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

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

238 (c) A bail commissioner may set bail in a misdemeanor case in accordance with
239 Sections 10-3-920 and 17-32-1.

240 (d) An individual arrested for a violation of a jail release agreement or jail release court
241 order issued in accordance with Section 78B-7-802:

242 (i) may be denied pretrial release by the court under Subsection (2); and

243 (ii) if denied pretrial release, may not be released before the individual's initial
244 appearance before the court.

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

246 (a) the indictment or information;

247 (b) any sworn statement or sworn probable cause statement or other information
248 provided by law enforcement;

249 (c) any form of pretrial services assessment;

250 (d) witness statements or testimony; or

251 (e) any other reliable record or source, including proffered evidence.

252 (6) (a) Except as provided by Subsection (6)(b), the prosecution and defendant have a
253 right to subpoena witnesses to testify at a pretrial detention hearing.

254 (b) If a defendant seeks to subpoena an alleged victim who did not willingly testify at a
255 pretrial detention hearing, at the conclusion of the hearing, a defendant may issue a subpoena
256 compelling the alleged victim to testify at a subsequent pretrial detention hearing only if the
257 court finds that the testimony sought by the subpoena:

258 (i) is material to the substantial evidence or clear and convincing evidence
259 determinations described in Subsection (2) in light of all information presented to the court;
260 and

261 (ii) would not unnecessarily intrude on the rights of the victim or place an undue
262 burden on the victim.

263 (c) An alleged victim has the right to be heard at a hearing on a motion for pretrial
264 detention.

265 (7) (a) A motion to modify the initial pretrial status order may be made by a party at
266 any time upon notice to the opposing party sufficient to permit the opposing party to prepare
267 for hearing and to permit each alleged victim to be notified and be present.

268 (b) Hearing on a motion to modify a pretrial status order may be held in conjunction
269 with a preliminary hearing or any other pretrial hearing.

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

273 (8) Subsequent motions to modify a pretrial status order may be made only upon a
274 showing that there has been a material change in circumstances.

275 (9) An appeal may be taken from an order of a court denying bail to the Utah Court of
276 Appeals pursuant to the Utah Rules of Appellate Procedure, which shall review the
277 determination under Subsection (2).

278 (10) For purposes of this section, any arrest or charge for a violation of Section
279 76-5-202, Aggravated murder, is a capital felony unless:

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

281 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
282 has not filed a notice to seek the death penalty; or

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

284 (11) Notwithstanding any other provisions of this section, there is a rebuttable
285 presumption that an individual is a substantial danger to the community:

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

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