

PENALTY FOR TARGETING LAW ENFORCEMENT OFFICER

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates a specific penalty for targeting a law enforcement officer while facilitating terrorism.

Highlighted Provisions:

This bill:

- ▶ defines "terrorism";
- ▶ adds facilitating terrorism to the aggravating factors for aggravated murder; and
- ▶ specifically designates targeting a law enforcement officer as terrorism.

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 2013, Chapter 81

ENACTS:

76-3-203.12, Utah Code Annotated 1953

76-8-1501, Utah Code Annotated 1953

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



28 Section 1. Section **76-3-203.12** is enacted to read:

29 **76-3-203.12. Increase of sentence for felony if committed with intent to facilitate**
30 **terrorism.**

31 (1) As used in this section, "terrorism" means the same as that term is defined in
32 Section [76-8-1501](#).

33 (2) A person convicted of a felony may be sentenced to imprisonment for an
34 indeterminate term, as provided in Section [76-3-203](#), but if the trier of fact finds beyond a
35 reasonable doubt that the defendant committed the felony with the intent to facilitate terrorism
36 and the felony is:

37 (a) a first degree felony, the court shall sentence the person convicted for a term of not
38 less than 10 years, and which may be for life;

39 (b) a second degree felony, the court shall sentence the person convicted for a term of
40 not less than five years nor more than 20 years; and

41 (c) a third degree felony, the court shall sentence the person convicted for a term of not
42 less than two years nor more than 10 years.

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

44 **76-5-202. Aggravated murder.**

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

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

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

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

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

59 arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child
60 kidnapping;

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

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

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

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

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

72 (i) aggravated murder under this section;

73 (ii) attempted aggravated murder under this section;

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

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

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

78 (j) the actor was previously convicted of:

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

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

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

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

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

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

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

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

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

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

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

- 90 (xii) aggravated sexual abuse of a child, Section [76-5-404.1](#);
- 91 (xiii) aggravated sexual assault, Section [76-5-405](#);
- 92 (xiv) aggravated arson, Section [76-6-103](#);
- 93 (xv) aggravated burglary, Section [76-6-203](#);
- 94 (xvi) aggravated robbery, Section [76-6-302](#);
- 95 (xvii) felony discharge of a firearm, Section [76-10-508.1](#); or
- 96 (xviii) an offense committed in another jurisdiction which if committed in this state
- 97 would be a violation of a crime listed in this Subsection (1)(j);
- 98 (k) the homicide was committed for the purpose of:
- 99 (i) preventing a witness from testifying;
- 100 (ii) preventing a person from providing evidence or participating in any legal
- 101 proceedings or official investigation;
- 102 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 103 any legal proceedings or official investigation; or
- 104 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 105 (l) the victim is or has been a local, state, or federal public official, or a candidate for
- 106 public office, and the homicide is based on, is caused by, or is related to that official position,
- 107 act, capacity, or candidacy;
- 108 (m) the victim is or has been a peace officer, law enforcement officer, executive
- 109 officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror,
- 110 probation officer, or parole officer, and the victim is either on duty or the homicide is based on,
- 111 is caused by, or is related to that official position, and the actor knew, or reasonably should
- 112 have known, that the victim holds or has held that official position;
- 113 (n) the homicide was committed:
- 114 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
- 115 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
- 116 structure, or was mailed or delivered; ~~or~~
- 117 (ii) by means of any weapon of mass destruction as defined in Section [76-10-401](#); or
- 118 (iii) to facilitate terrorism as defined in Section [76-8-1501](#);
- 119 (o) the homicide was committed during the act of unlawfully assuming control of any
- 120 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any

121 valuable consideration for the release of the public conveyance or any passenger, crew
122 member, or any other person aboard, or to direct the route or movement of the public
123 conveyance or otherwise exert control over the public conveyance;

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

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

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

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

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

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

135 (ii) was not an unborn child.

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

140 (a) child abuse, Subsection [76-5-109\(2\)\(a\)](#);

141 (b) child kidnapping, Section [76-5-301.1](#);

142 (c) rape of a child, Section [76-5-402.1](#);

143 (d) object rape of a child, Section [76-5-402.3](#);

144 (e) sodomy on a child, Section [76-5-403.1](#); or

145 (f) sexual abuse or aggravated sexual abuse of a child, Section [76-5-404.1](#).

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

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

150 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice
151 of intent to seek the death penalty. The notice shall be served on the defendant or defense

152 counsel and filed with the court.

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

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

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

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

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

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

- 170 (i) aggravated murder to murder; and
- 171 (ii) attempted aggravated murder to attempted murder.

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

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

177 Section 3. Section **76-8-1501** is enacted to read:

178 **76-8-1501. Terrorism defined.**

179 (1) "Terrorism" means the commission of any offense involving the unlawful use of
180 force and violence against any person or property, causing bodily injury, death, or substantial
181 property damage in furtherance of political or social objectives in order to intimidate or coerce
182 a civilian population or to influence or affect the conduct of a government or a unit of

183 government.

184 (2) "Terrorism" specifically includes the commission of a violent felony against a law
185 enforcement officer while the officer is on duty and in uniform.

186 (3) As used in Subsection (2), a violent felony means:

187 (a) Section [76-5-103](#), aggravated assault;

188 (b) Section [76-5-202](#), aggravated murder; and

189 (c) Section [76-5-203](#), murder.

Legislative Review Note
Office of Legislative Research and General Counsel