

76-5-205.5 Special mitigation reducing the level of criminal homicide offense -- Burden of proof -- Application to reduce offense.

- (1) Special mitigation exists when the actor causes the death of another or attempts to cause the death of another:
 - (a)
 - (i) under circumstances that are not legally justified, but the actor acts under a delusion attributable to a mental illness as defined in Section 76-2-305;
 - (ii) the nature of the delusion is such that, if the facts existed as the defendant believed them to be in the delusional state, those facts would provide a legal justification for the defendant's conduct; and
 - (iii) the defendant's actions, in light of the delusion, were reasonable from the objective viewpoint of a reasonable person; or
 - (b) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse.
- (2) A defendant who was under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense may not claim mitigation of the offense under Subsection (1)(a) on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.
- (3) Under Subsection (1)(b), emotional distress does not include:
 - (a) a condition resulting from mental illness as defined in Section 76-2-305; or
 - (b) distress that is substantially caused by the defendant's own conduct.
- (4) The reasonableness of an explanation or excuse under Subsection (1)(b) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.
- (5)
 - (a) If the trier of fact finds the elements of an offense as listed in Subsection (5)(b) are proven beyond a reasonable doubt, and also that the existence of special mitigation under this section is established by a preponderance of the evidence, it shall return a verdict on the reduced charge as provided in Subsection (5)(b).
 - (b) If under Subsection (5)(a) the offense is:
 - (i) aggravated murder, the defendant shall instead be found guilty of murder;
 - (ii) attempted aggravated murder, the defendant shall instead be found guilty of attempted murder;
 - (iii) murder, the defendant shall instead be found guilty of manslaughter; or
 - (iv) attempted murder, the defendant shall instead be found guilty of attempted manslaughter.
- (6)
 - (a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish the existence of the special mitigation.
 - (b) If the jury does find special mitigation by a unanimous vote, it shall return a verdict on the reduced charge as provided in Subsection (5).
 - (c) If the jury finds by a unanimous vote that special mitigation has not been established, it shall convict the defendant of the greater offense for which the prosecution has established all the elements beyond a reasonable doubt.
 - (d) If the jury is unable to unanimously agree whether or not special mitigation has been established, the result is a hung jury.
- (7)
 - (a) If the issue of special mitigation is submitted to the trier of fact, it shall return a special verdict indicating whether the existence of special mitigation has been found.

- (b) The trier of fact shall return the special verdict at the same time as the general verdict, to indicate the basis for its general verdict.
- (8) Special mitigation under this section does not, in any case, reduce the level of an offense by more than one degree from that offense, the elements of which the evidence has established beyond a reasonable doubt.

Amended by Chapter 206, 2009 General Session