

**SPECIAL MITIGATION FOR MENTALLY ILL  
OFFENDERS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Paula F. Julander**

AN ACT RELATING TO CRIMINAL LAW; ESTABLISHING SPECIAL MITIGATION THAT REDUCES THE CHARGES FOR HOMICIDE OFFENSES, BASED ON MENTAL ILLNESS; PROVIDING STANDARD OF PROOF; AND PROVIDING PROCEDURE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**76-2-305**, as last amended by Chapter 306, Laws of Utah 1990

**76-5-203**, as last amended by Chapter 123, Laws of Utah 1996

**76-5-205**, as last amended by Chapter 177, Laws of Utah 1985

**77-14-4**, as last amended by Chapter 254, Laws of Utah 1995

**77-16a-301**, as enacted by Chapter 171, Laws of Utah 1992

ENACTS:

**76-5-205.5**, Utah Code Annotated 1953

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

Section 1. Section **76-2-305** is amended to read:

**76-2-305. Mental illness -- Use as a defense -- Influence of alcohol or other substance voluntarily consumed -- Definition.**

(1) (a) It is a defense to a prosecution under any statute or ordinance that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged.

(b) Mental illness is not otherwise a defense, but may be evidence in mitigation of the penalty in a capital felony under Section 76-3-207 and may be evidence of special mitigation reducing the level of a criminal homicide or attempted criminal homicide offense under Section 76-5-205.5.

(2) The defense defined in this section includes the defenses known as "insanity" and "diminished mental capacity."

(3) A person who asserts a defense of insanity or diminished mental capacity, and who is under the influence of voluntarily consumed [or], injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense is not excused from criminal responsibility on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.

(4) (a) "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, mental retardation.

(b) "Mental illness" does not mean:

(i) a personality or character disorder; or

(ii) an abnormality manifested [only] primarily by repeated criminal conduct.

(5) "Mental retardation" means a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as defined by the current Diagnostic and Statistical Manual of the American Psychiatric Association.

Section 2. Section **76-5-203** is amended to read:

**76-5-203. Murder.**

(1) Criminal homicide constitutes murder if the actor:

(a) intentionally or knowingly causes the death of another;

(b) intending to cause serious bodily injury to another commits an act clearly dangerous to human life that causes the death of another;

(c) acting under circumstances evidencing a depraved indifference to human life engages in conduct which creates a grave risk of death to another and thereby causes the death of another;

(d) while in the commission, attempted commission, or immediate flight from the commission or attempted commission of aggravated robbery, robbery, rape, object rape, forcible sodomy, or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, kidnapping, child kidnapping, rape of a child, object rape of a child, sodomy

upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, or child abuse, as defined in Subsection 76-5-109 (2)(a), when the victim is younger than 14 years of age, causes the death of another person other than a party as defined in Section 76-2-202; [or]

(e) recklessly causes the death of a peace officer while in the commission or attempted commission of:

(i) an assault against a peace officer as defined in Section 76-5-102.4; or

(ii) interference with a peace officer while making a lawful arrest as defined in Section 76-8-305 if the actor uses force against a peace officer[-]; or

(f) commits aggravated murder, but special mitigation is established under Section 76-5-205.5.

(2) Murder is a first degree felony.

Section 3. Section **76-5-205** is amended to read:

**76-5-205. Manslaughter.**

(1) Criminal homicide constitutes manslaughter if the actor:

(a) recklessly causes the death of another; [or]

(b) causes the death of another under the influence of extreme emotional disturbance for which there is a reasonable explanation or excuse; [or]

(c) causes the death of another under circumstances where the actor reasonably believes the circumstances provide a legal justification or excuse for his conduct although the conduct is not legally justifiable or excusable under the existing circumstances[-]; or

(d) commits murder, but special mitigation is established under Section 76-5-205.5.

(2) Under Subsection (1) (b), emotional disturbance does not include a condition resulting from mental illness as defined in Section 76-2-305.

(3) The reasonableness of an explanation or excuse under Subsection (1) (b), or the reasonable belief of the actor under Subsection (1) (c), shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(4) Manslaughter is a felony of the second degree.

Section 4. Section **76-5-205.5** is enacted to read:

**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:

(a) the actor causes the death of another 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; and  
(b) the nature of the delusion is such that, if the facts existed as the defendant believed them to be in his delusional state, those facts would provide a legal justification for his conduct.

(2) This section applies only if the defendant's actions, in light of his delusion, were reasonable from the objective viewpoint of a reasonable person.

(3) 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 this section on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.

(4) (a) If the trier of fact finds the elements of an offense as listed in Subsection (4)(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 (4)(b).

(b) If under Subsection (4)(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.

(5) (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 (4).

(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.

(6) (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.

(7) 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.

Section 5. Section **77-14-4** is amended to read:

**77-14-4. Insanity or diminished mental capacity -- Notice requirement.**

(1) If a defendant proposes to offer evidence that he is not guilty as a result of insanity or that he had diminished mental capacity, or proposes to offer evidence in mitigation of a criminal homicide or attempted criminal homicide offense under Section 76-5-205.5, he shall file and serve the prosecuting attorney with written notice of his intention to claim the defense at the time of arraignment or as soon afterward as practicable, but not fewer than 30 days before the trial.

(2) If the court receives notice that a defendant intends to claim that he is not guilty by reason of insanity or that he had diminished mental capacity, the court shall proceed in accordance with the requirements described in Section 77-16a-301.

Section 6. Section **77-16a-301** is amended to read:

**77-16a-301. Mental examination of defendant**

(1) (a) When the court receives notice that a defendant intends to claim that he is not guilty by reason of insanity or that he had diminished mental capacity, or that he intends to assert special mitigation under Section 76-5-205.5, the court shall order the Department of Human Services to examine the defendant and investigate his mental condition.

(b) The person or organization directed by the department to conduct the examination shall testify at the request of the court or either party in any proceeding in which the testimony is otherwise admissible.

(c) Pending trial, unless the court or the executive director directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(2) (a) The defendant shall make himself available and fully cooperate in the examination by the department and any other independent examiners for the defense and the prosecuting attorney.

(b) If the defendant fails to make himself available and fully cooperate, and that failure is established to the satisfaction of the court at a hearing prior to trial, the defendant is barred from presenting expert testimony relating to his defense of mental illness at the trial of the case.

(c) The department shall complete the examination within 30 days after the court's order, and shall prepare and provide to the court prosecutor and defense counsel a written report concerning the condition of the defendant.

(3) Within ten days after receipt of the report from the department, but not later than five days before the trial of the case, or at any other time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal of the defense of mental illness, which shall contain the names of witnesses the prosecuting attorney proposes to call in rebuttal.

(4) The reports of any other independent examiner are admissible as evidence upon stipulation of the prosecution and defense.

(5) This section does not prevent any party from producing any other testimony as to the mental condition of the defendant. Expert witnesses who are not appointed by the court are not entitled to compensation under Subsection (7).

(6) This section does not require the admission of evidence not otherwise admissible.

(7) Expenses of examination ordered by the court under this section shall be paid by the Department of Human Services. Travel expenses associated with the examination incurred by the defendant shall be charged by the department to the county where prosecution is commenced. Examination of defendants charged with violation of municipal or county ordinances shall be charged by the department to the entity commencing the prosecution.

