

**MURDER DEFENSE AMENDMENTS**

2019 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill relates to special mitigation of the penalty for a criminal homicide offense.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ modifies the circumstances under which a defendant's extreme emotional distress is special mitigation of the penalty for a criminal homicide offense;
- ▶ modifies the consequences in a criminal trial if the jury is unable to unanimously agree that special mitigation based on the defendant's extreme emotional distress or mental illness is established; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5-205.5**, as last amended by Laws of Utah 2009, Chapter 206

**77-14-4**, as last amended by Laws of Utah 2009, Chapter 206

**77-16a-102**, as last amended by Laws of Utah 2011, Chapter 366

**77-16a-301**, as last amended by Laws of Utah 2009, Chapter 206

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

Section 1. Section **76-5-205.5** is amended to read:

**76-5-205.5. Special mitigation for mental illness or provocation reducing the level of criminal homicide offense -- Burden of proof -- Application to reduce offense.**

(1) As used in this section:

33 (a) (i) "Extreme emotional distress" means an overwhelming reaction of anger, shock,  
 34 or grief that causes the defendant to be incapable of reflection and restraint.

35 (ii) "Extreme emotional distress" does not include:

36 (A) a condition resulting from mental illness; or

37 (B) distress that is substantially caused by the defendant's own conduct.

38 (b) (i) "Highly provoking act" means a felony act that would cause an objectively  
 39 reasonable person to experience extreme emotional distress.

40 (ii) "Highly provoking act" does not include words or threats alone.

41 (c) "Mental illness" means the same as that term is defined in Section 76-2-305.

42 ~~[(1)]~~ (2) Special mitigation exists when ~~[the actor]~~ a defendant causes the death of  
 43 another or attempts to cause the death of another:

44 (a) ~~[(1)]~~ under circumstances that are not legally justified~~[-but]~~ if:

45 (i) the [actor] defendant acts under a delusion attributable to a mental illness [as defined  
 46 in Section 76-2-305];

47 (ii) the nature of the delusion is such that, if the facts existed as the defendant believed  
 48 them to be in the delusional state, those facts would provide a legal justification for the  
 49 defendant's conduct; and

50 (iii) the defendant's actions, in light of the delusion, [were] are reasonable from the  
 51 objective viewpoint of a reasonable person; or

52 (b) except as provided in Subsection (4), under the influence of extreme emotional  
 53 distress [for which there is a reasonable explanation or excuse] that is solely caused by the  
 54 victim's highly provoking act immediately preceding the defendant's actions.

55 ~~[(2)]~~ (3) A defendant who ~~[was]~~ is under the influence of voluntarily consumed,  
 56 injected, or ingested alcohol, controlled substances, or volatile substances at the time of the  
 57 alleged offense may not claim mitigation of the offense under Subsection ~~[(1)]~~ (2)(a) on the  
 58 basis of mental illness if the alcohol or substance ~~[caused, triggered, or substantially~~  
 59 ~~contributed to the]~~ causes, triggers, or substantially contributes to the defendant's mental  
 60 illness.

61 ~~[(3) Under Subsection (1)(b), emotional distress does not include:]~~

62 ~~[(a) a condition resulting from mental illness as defined in Section 76-2-305; or]~~

63 ~~[(b) distress that is substantially caused by the defendant's own conduct.]~~

64 ~~[(4) The reasonableness of an explanation or excuse under Subsection (1)(b) shall be~~  
65 ~~determined from the viewpoint of a reasonable person under the then existing circumstances.]~~

66 (4) A defendant may not claim special mitigation under Subsection (2)(b) if:

67 (a) the time period after the victim's highly provoking act and before the defendant's  
68 actions was long enough for an objectively reasonable person under the same circumstances to  
69 have recovered from the extreme emotional distress; or

70 (b) the defendant responded to the victim's highly provoking act by inflicting serious or  
71 substantial bodily injury on the victim over a prolonged period, or by inflicting torture on the  
72 victim, regardless of whether the victim was conscious during the infliction of serious or  
73 substantial bodily injury or torture.

74 (5) (a) If the trier of fact finds that the elements of an offense [~~as listed~~] described in  
75 Subsection (5)(b) are proven beyond a reasonable doubt, and also finds that the existence of  
76 special mitigation under this section is established by a preponderance of the evidence, [~~it~~] the  
77 trier of fact shall return a verdict on the reduced charge as provided in Subsection (5)(b).

78 (b) If under Subsection (5)(a) the offense is:

79 (i) aggravated murder, the defendant shall instead be found guilty of murder;

80 (ii) attempted aggravated murder, the defendant shall instead be found guilty of  
81 attempted murder;

82 (iii) murder, the defendant shall instead be found guilty of manslaughter; or

83 (iv) attempted murder, the defendant shall instead be found guilty of attempted  
84 manslaughter.

85 (c) If the trier of fact finds that special mitigation is not established under this section,  
86 the trier of fact shall convict the defendant of the offense for which the prosecution proves all  
87 the elements beyond a reasonable doubt.

88 (6) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish  
89 the existence of the special mitigation under this section.

90 (b) If the jury [~~does find~~] finds special mitigation by a unanimous vote, [~~it~~] the jury  
91 shall return a verdict on the reduced charge as provided in Subsection (5).

92 (c) If the jury finds by a unanimous vote that special mitigation [~~has not been~~  
93 ~~established, it~~] is not established, or if the jury is unable to unanimously agree special  
94 mitigation is established, the jury shall convict the defendant of the greater offense for which

95 the prosecution [~~has established~~] proves all the elements beyond a reasonable doubt.

96 [~~(d) If the jury is unable to unanimously agree whether or not special mitigation has~~  
97 ~~been established, the result is a hung jury.]~~

98 (7) (a) If the issue of special mitigation is submitted to the trier of fact, [~~it~~] the trier of  
99 fact shall return a special verdict indicating whether the existence of special mitigation [~~has~~  
100 ~~been~~] is found.

101 (b) The trier of fact shall return the special verdict at the same time as the general  
102 verdict, to indicate the basis for [~~its~~] the general verdict.

103 (8) Special mitigation under this section does not, in any case, reduce the level of an  
104 offense by more than one degree from that offense, the elements of which the evidence [~~has~~  
105 ~~established~~] proves beyond a reasonable doubt.

106 Section 2. Section **77-14-4** is amended to read:

107 **77-14-4. Insanity or diminished mental capacity -- Notice requirement.**

108 (1) If a defendant [~~proposes~~] intends to offer evidence that the defendant is not guilty  
109 as a result of insanity or that the defendant had diminished mental capacity, or [~~proposes~~]  
110 intends to offer evidence in mitigation of a criminal homicide or attempted criminal homicide  
111 offense under Subsection 76-5-205.5[~~(+)~~](2)(a), the defendant shall file and serve the  
112 prosecuting attorney with written notice of the intention to claim the defense at the time of  
113 arraignment or as soon afterward as practicable, but not [~~fewer~~] less than 30 days before the  
114 trial.

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

118 Section 3. Section **77-16a-102** is amended to read:

119 **77-16a-102. Jury instructions.**

120 (1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall  
121 instruct the jury that [~~it~~] the jury may find the defendant:

122 (a) guilty;

123 (b) guilty with a mental illness at the time of the offense;

124 (c) guilty of a lesser offense;

125 (d) guilty of a lesser offense with a mental illness at the time of the offense;

126 (e) not guilty by reason of insanity; or

127 (f) not guilty.

128 (2) (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or

129 asserts special mitigation reducing the level of an offense pursuant to Subsection

130 76-5-205.5~~(+)~~(2)(a), or when the evidence raises the issue and either party requests the

131 instruction, the ~~[jury shall be instructed that if it]~~ court shall instruct the jury that if the jury

132 finds a defendant guilty by proof beyond a reasonable doubt of ~~[any]~~ a charged offense or lesser

133 included offense, ~~[it]~~ the jury shall also return a special verdict indicating whether ~~[it]~~ the jury

134 finds that the defendant had a mental illness at the time of the offense.

135 (b) If the jury finds the defendant guilty of the charged offense by proof beyond a

136 reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of

137 the offense, ~~[it]~~ the jury shall return the general verdict of "guilty with a mental illness at the

138 time of the offense."

139 (c) If the jury finds the defendant guilty of a lesser offense by proof beyond a

140 reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of

141 the offense, ~~[it]~~ the jury shall return the general verdict of "guilty of a lesser offense with a

142 mental illness at the time of the offense."

143 (d) If the jury finds the defendant guilty of the charged offense or a lesser included

144 offense and does not find that the defendant had a mental illness at the time of the offense, the

145 jury shall return a verdict of "guilty" of ~~[that]~~ the offense, along with the special verdict form

146 indicating that the jury did not find that the defendant had a mental illness at the time of the

147 offense.

148 (e) The special verdict shall be returned by the jury at the same time as the general

149 verdict, to indicate the basis for ~~[its]~~ the jury's general verdict.

150 (3) (a) In determining whether a defendant should be found guilty with a mental illness

151 at the time of the offense, the ~~[jury shall be instructed]~~ court shall instruct the jury that the

152 standard of proof applicable to a finding of mental illness is by a preponderance of the

153 evidence. ~~[The jury shall also be instructed]~~

154 (b) The court shall also instruct the jury that the standard of preponderance of the

155 evidence does not apply to the elements establishing a defendant's guilt, and that the proof of

156 the elements establishing a defendant's guilt of ~~[any]~~ an offense must be proven beyond a

157 reasonable doubt.

158 (4) (a) When special mitigation based on extreme emotional distress is at issue  
159 pursuant to Subsection 76-5-205.5~~(1)~~(2)(b), the jury shall, in addition to ~~its~~ the jury's  
160 general verdict, return a special verdict.

161 (b) The special verdict shall be returned by the jury at the same time as the general  
162 verdict, to indicate the basis for ~~its~~ the jury's general verdict.

163 Section 4. Section **77-16a-301** is amended to read:

164 **77-16a-301. Mental examination of defendant.**

165 (1) (a) When the court receives notice that a defendant intends to claim that the  
166 defendant is not guilty by reason of insanity or that the defendant had diminished mental  
167 capacity, or that the defendant intends to assert special mitigation under Subsection  
168 76-5-205.5~~(1)~~(2)(a), the court shall order the ~~Department of Human Services~~ department to  
169 examine the defendant and investigate the defendant's mental condition.

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

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

176 (2) (a) The defendant shall be available and shall fully cooperate in the examination by  
177 the department and ~~any~~ other independent examiners for the defense and the prosecuting  
178 attorney.

179 (b) If the defendant fails to be available and to fully cooperate, and that failure is  
180 established to the satisfaction of the court at a hearing prior to trial, the defendant is barred  
181 from presenting expert testimony relating to the defendant's defense of mental illness at the  
182 trial of the case.

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

186 (3) Within 10 days after receipt of the report described in Subsection (2)(c) from the  
187 department, but not later than five days before the trial of the case, or at any other time the

188 court directs, the prosecuting attorney shall file and serve upon the defendant a notice of  
189 rebuttal of the defense of mental illness, which shall contain the names of witnesses the  
190 prosecuting attorney proposes to call in rebuttal.

191 (4) The ~~[reports of any other]~~ report of another independent examiner ~~[are]~~ is  
192 admissible as evidence upon stipulation of the prosecution and defense.

193 (5) (a) This section does not prevent ~~[any]~~ a party from producing ~~[any]~~ other  
194 testimony as to the mental condition of the defendant. ~~[Expert witnesses who are]~~

195 (b) An expert witness who is not appointed by the court ~~[are]~~ is not entitled to  
196 compensation under Subsection (7).

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

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

203 (7) (a) The department shall pay the expenses of an examination ordered by the court  
204 under this section.

205 (b) The department shall charge the county where the prosecution is commenced for  
206 travel expenses associated with an examination incurred by a defendant.

207 (c) The department shall charge the entity commencing the prosecution for an  
208 examination of a defendant charged with a violation of a municipal or county ordinance.