

Murder Defense Amendment Fact Sheet

Executive Summary

- Defendants charged with committing or attempting to commit murder or aggravated murder can claim that they acted under extreme emotional distress. Extreme-emotional-distress mitigation (EED) reduces the offense one level: for example, from aggravated murder to murder, or from murder to manslaughter. Traditionally, mitigation applied only when the defendant lost control as a result of a contemporaneous, highly provoking act. But Utah courts have read the current EED statute to permit mitigation even when there is no immediately preceding, highly provoking act by the victim. This has allowed perpetrators of domestic violence to claim EED based on only the slightest provocation by the victim. This proposed amendment restores the nexus between the victim's highly provoking act and the defendant's EED so that mitigation applies only to circumstances that are truly mitigating.

What the Amendment Does

- Specifies the intense emotional reactions that can qualify as EED (anger, shock, or grief);
- Requires the defendant's EED to be predominantly caused by an immediately preceding, highly provoking act;
- Sets a threshold that the highly provoking act must at least be a felony, but also requires it to be so offensive that it would cause a reasonable person to experience EED;
- Adopts limits from other states with the common-law defense (mitigation unavailable where there is a cooling-off period, words alone are not enough, mitigation unavailable when defendant inflicts torture or prolonged abuse before killing the victim); and
- Addresses the effect of the defendant's failure to prove special mitigation.

Need for the Amendment

- Traditionally, mitigation applied to limited situations where it is understandable for someone to lose self-control and respond violently to a provocation. Because it is understandable, society views a defendant who loses self-control and kills under those circumstances as less culpable.
- But Utah courts have shifted the focus from the provocation and require courts and juries to judge the reasonableness of a defendant's extreme emotional distress by looking at a defendant's lifetime of experience leading up to his or her loss of self-control. That approach allows perpetrators of domestic violence to claim EED based on a turbulent relationship, and it allows others to claim EED based on only the slightest provocation so long as it follows a history of buildup, even when the defendant did nothing to resolve it. (See attached case list.)
- When EED is applied broadly, it divorces the mitigation from its purpose – to lessen the penalty for someone whose conduct, although criminal, is understandable. It allows persons to get the benefit of mitigation even where they had ample opportunity to address their upset through means other than killing or attempting to kill. It sends the message that persons who face a history of bullying, a tumultuous relationship, or other on-going distressing situations may resolve it by killing rather than seeking help for their ongoing distress.
- This amendment mitigates the culpability of homicides only in those situations where society can empathize with the defendant's loss of self-control, while sending a clear message that society expects people to find non-violent solutions to distressing situations.
- Appellate judges have asked the Legislature to amend the EED statute:
 - Former Judge Voros has explained that EED “has for two decades been criticized as mitigating violence committed by men against women in intimate relationships.” *State v. Scott*, 2017 UT App 74, ¶ 40 (Voros, J., concurring). He has further noted that, as interpreted by Utah courts, the EED statute currently can be “used to mitigate the final act of abuse perpetrated by an abusive intimate partner.” *Id.* ¶¶ 40-42. Judge Christiansen has stated that the statute, as currently interpreted, “gives continued life to antiquated notions of spousal control and perpetuates a belief that violence against women and intimate-partner homicide are acceptable and legitimate.” *Id.* ¶¶ 44-46 (Christiansen, J., concurring).

Utah Cases Applying EED Expansively

- In *State v. White*, the defendant and her husband divorced after a difficult 11-year marriage. The defendant's emotional problems increased after the divorce; her ex-husband was not cooperating with her about refinancing their house. When the defendant saw him talking on a cell phone he had denied owning, she lost control and tried to run him over, driving onto the sidewalk and through the lobby of his office. The supreme court held that the EED statute did not require the defendant to show a highly provoking, contemporaneous event that triggered her loss of self-control. 2011 UT 21.
- In *State v. Lambdin*, the defendant and his wife had a turbulent marriage. The defendant claimed that his wife was emotionally abusive. After an argument one day, the defendant wrote a letter while his wife was at work, saying he killed his wife and himself. When his wife returned home seven hours later, they again started to argue. The defendant claimed that when his wife said he was crazy and should move out, he lost it and killed her. Based on these facts, the defendant was able to obtain a jury instruction on EED, though the jury ultimately rejected the defense and the conviction was affirmed. 2017 UT 46.
- In *State v. Smith*, the defendant was at his friend's house when the friend got in a heated argument with a woman who was moving out of a room she rented from him. The friend shot the woman and a man who was helping her move, then he told the defendant to kill another woman who was there helping with the move. The defendant killed her, and at trial he argued that his fear of his friend caused EED. The jury agreed and reduced the level of the offense. Mori Kesler, "Smith convicted of murder on reduced charge with 'special mitigations,'" *St. George News* (February 10, 2017), available at <https://www.stgeorgeutah.com/news/archive/2017/02/10/mgk-smith-convicted-of-murder-on-reduced-charge-with-special-mitigations/#.W-shypNKi72>.
- In *State v. Scott*, the defendant and his wife had been in a long and turbulent marriage. The defendant had threatened multiple times to kill his wife, he had tried to run her over with an SUV, and he had been convicted of domestic violence against her. One day, when his wife yelled at him while she was on the phone, he shot her. He claimed he was overwhelmed with emotion because they had been fighting constantly, she threatened him the day before, and he was afraid she was going to shoot him. The jury was instructed on EED but rejected it, and the case is now on appeal. 2017 UT App 74, *cert. granted*, 406 P.3d 250.