

### **Part 3**

## **Defenses to Criminal Responsibility**

#### **76-2-301 Person under 14 years old not criminally responsible.**

A person is not criminally responsible for conduct performed before he reaches the age of 14 years. This section shall in no way limit the jurisdiction of or proceedings before the juvenile courts of this state.

Enacted by Chapter 196, 1973 General Session

#### **76-2-302 Compulsion.**

- (1) A person is not guilty of an offense when he engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would not have resisted.
- (2) The defense of compulsion provided by this section shall be unavailable to a person who intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subjected to duress.
- (3) A married woman is not entitled, by reason of the presence of her husband, to any presumption of compulsion or to any defense of compulsion except as in Subsection (1) provided.

Enacted by Chapter 196, 1973 General Session

#### **76-2-303 Entrapment.**

- (1) It is a defense that the actor was entrapped into committing the offense. Entrapment occurs when a peace officer or a person directed by or acting in cooperation with the officer induces the commission of an offense in order to obtain evidence of the commission for prosecution by methods creating a substantial risk that the offense would be committed by one not otherwise ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.
- (2) The defense of entrapment shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening the injury to a person other than the person perpetrating the entrapment.
- (3) The defense provided by this section is available even though the actor denies commission of the conduct charged to constitute the offense.
- (4) Upon written motion of the defendant, the court shall hear evidence on the issue and shall determine as a matter of fact and law whether the defendant was entrapped to commit the offense. Defendant's motion shall be made at least 10 days before trial except the court for good cause shown may permit a later filing.
- (5) Should the court determine that the defendant was entrapped, it shall dismiss the case with prejudice, but if the court determines the defendant was not entrapped, such issue may be presented by the defendant to the jury at trial. Any order by the court dismissing a case based on entrapment shall be appealable by the state.
- (6) In any hearing before a judge or jury where the defense of entrapment is an issue, past offenses of the defendant shall not be admitted except that in a trial where the defendant testifies he may be asked of his past convictions for felonies and any testimony given by the defendant at a hearing on entrapment may be used to impeach his testimony at trial.

Amended by Chapter 282, 1998 General Session

**76-2-304 Ignorance or mistake of fact or law.**

- (1) Unless otherwise provided, ignorance or mistake of fact which disproves the culpable mental state is a defense to any prosecution for that crime.
- (2) Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless:
  - (a) Due to his ignorance or mistake, the actor reasonably believed his conduct did not constitute an offense, and
  - (b) His ignorance or mistake resulted from the actor's reasonable reliance upon:
    - (i) An official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or
    - (ii) A written interpretation of the law contained in an opinion of a court of record or made by a public servant charged by law with responsibility for interpreting the law in question.
- (3) Although an actor's ignorance or mistake of fact or law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the fact or law were as he believed.

Amended by Chapter 32, 1974 General Session

**76-2-304.5 Mistake as to victim's age not a defense.**

- (1) It is not a defense to the crime of child kidnapping, a violation of Section 76-5-301.1; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation of Section 76-5-402.3; sodomy on a child, a violation of Section 76-5-403.1; sexual abuse of a child, a violation of Section 76-5-404.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4); or an attempt to commit any of these offenses, that the actor mistakenly believed the victim to be 14 years of age or older at the time of the alleged offense or was unaware of the victim's true age.
- (2) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Section 76-5-401; sexual abuse of a minor, a violation of Section 76-5-401.1; or an attempt to commit either of these offenses, that the actor mistakenly believed the victim to be 16 years of age or older at the time of the alleged offense or was unaware of the victim's true age.
- (3) It is not a defense to the crime of aggravated human trafficking or aggravated human smuggling, a violation of Section 76-5-310, or human trafficking of a child, a violation of Section 76-5-308.5, that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age.
- (4) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Subsection 76-5-401.2(2)(a)(ii), that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age.
- (5) It is not a defense to any of the following crimes that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age:
  - (a) patronizing a prostitute, a violation of Section 76-10-1303;
  - (b) aggravated exploitation of a prostitute, a violation of Section 76-10-1306; or
  - (c) sexual solicitation, a violation of Section 76-10-1313.

Amended by Chapter 194, 2016 General Session

**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, 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) As used in this section:
  - (a) "Intellectual disability" means a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to age 22.
  - (b)
    - (i) "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, intellectual disability.
    - (ii) "Mental illness" does not mean an abnormality manifested primarily by repeated criminal conduct.

Amended by Chapter 115, 2016 General Session

**76-2-306 Voluntary intoxication.**

Voluntary intoxication shall not be a defense to a criminal charge unless such intoxication negates the existence of the mental state which is an element of the offense; however, if recklessness or criminal negligence establishes an element of an offense and the actor is unaware of the risk because of voluntary intoxication, his unawareness is immaterial in a prosecution for that offense.

Enacted by Chapter 196, 1973 General Session

**76-2-307 Voluntary termination of efforts prior to offense.**

It is an affirmative defense to a prosecution in which an actor's criminal responsibility arises from his own conduct or from being a party to an offense under Section 76-2-202 that prior to the commission of the offense, the actor voluntarily terminated his effort to promote or facilitate its commission and either:

- (1) Gave timely warning to the proper law enforcement authorities or the intended victim; or
- (2) Wholly deprives his prior efforts of effectiveness in the commission.

Amended by Chapter 20, 1995 General Session

**76-2-308 Affirmative defenses.**

Defenses enumerated in this part constitute affirmative defenses.

Enacted by Chapter 196, 1973 General Session