

Effective 5/3/2023

76-5-205.5 Special mitigation for mental condition or provocation -- Burden of proof -- Charge reduction.

- (1)
 - (a) As used in this section:
 - (i)
 - (A) "Extreme emotional distress" means an overwhelming reaction of anger, shock, or grief that:
 - (I) causes the defendant to be incapable of reflection and restraint; and
 - (II) would cause an objectively reasonable person to be incapable of reflection and restraint.
 - (B) "Extreme emotional distress" does not include:
 - (I) a condition resulting from a mental condition; or
 - (II) distress that is substantially caused by the defendant's own conduct.
 - (ii) "Mental condition" means the same as that term is defined in Section 76-2-305.
 - (b) The terms defined in Section 76-1-101.5 apply to this section.
- (2) Special mitigation exists when a defendant causes the death of another individual or attempts to cause the death of another individual:
 - (a)
 - (i) under circumstances that are not legally justified, but the defendant acts under a delusion attributable to a mental condition;
 - (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, are reasonable from the objective viewpoint of a reasonable person; or
 - (b) except as provided in Subsection (4), under the influence of extreme emotional distress that is predominantly caused by the victim's highly provoking act immediately preceding the defendant's actions.
- (3) A defendant who is 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 (2)(a) on the basis of a mental condition if the alcohol or substance causes, triggers, or substantially contributes to the defendant's mental condition.
- (4) A defendant may not claim special mitigation under Subsection (2)(b) if:
 - (a) the time period after the victim's highly provoking act and before the defendant's actions was long enough for an objectively reasonable person to have recovered from the extreme emotional distress;
 - (b) the defendant responded to the victim's highly provoking act by inflicting serious or substantial bodily injury on the victim over a prolonged period, or by inflicting torture on the victim, regardless of whether the victim was conscious during the infliction of serious or substantial bodily injury or torture; or
 - (c) the victim's highly provoking act, described in Subsection (2)(b), is comprised of words alone.
- (5) If the trier of fact finds that the elements of aggravated murder, attempted aggravated murder, murder, or attempted murder are proven beyond a reasonable doubt, and also finds that the existence of special mitigation under this section is established by a preponderance of the evidence, the court shall enter a judgment of conviction in accordance with Subsection 76-5-202(3)(f)(i), 76-5-202(3)(f)(ii), 76-5-203(3)(b)(i), or 76-5-203(3)(b)(ii), respectively.

- (6) If the issue of special mitigation is submitted to the trier of fact, the trier of fact shall return a special verdict at the same time as the general verdict, indicating whether it finds special mitigation.
- (7)
- (a) If a jury is the trier of fact, a unanimous vote of the jury is required to find special mitigation under this section.
 - (b) If the jury unanimously finds that the elements of an offense described in Subsection (5) are proven beyond a reasonable doubt, and finds special mitigation by a unanimous vote, the jury shall return a general verdict finding the defendant guilty of the charged crime and a special verdict indicating special mitigation.
 - (c) If the jury unanimously finds that the elements of an offense described in Subsection (5) are proven beyond a reasonable doubt but finds by a unanimous vote that special mitigation is not established, or if the jury is unable to unanimously agree that special mitigation is established, the jury shall convict the defendant of the greater offense for which the prosecution proves all the elements beyond a reasonable doubt.

Amended by Chapter 184, 2023 General Session