



1 reducing the level of a criminal homicide or attempted criminal homicide offense under Subsection  
2 76-5-205.5(1)(c).

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

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

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

14 (a) a personality or character disorder; or

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

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

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

21 **76-5-203. Murder.**

22 (1) Criminal homicide constitutes murder if the actor:

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

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

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

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

1 sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of  
 2 a child, or child abuse, as defined in Subsection 76-5-109 (2)(a), when the victim is younger than  
 3 14 years of age, causes the death of another person other than a party as defined in Section  
 4 76-2-202; [or]

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

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

8 (ii) interference with a peace officer while making a lawful arrest as defined in Section  
 9 76-8-305 if the actor uses force against a peace officer; or

10 (f) commits aggravated murder, but special mitigation is established under Section  
 11 76-5-205.5.

12 (2) Murder is a first degree felony.

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

14 **76-5-205. Manslaughter.**

15 (1) Criminal homicide constitutes manslaughter if the actor:

16 (a) recklessly causes the death of another; or

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

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

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

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

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

28 ~~[(4)]~~ (2) Manslaughter is a felony of the second degree.

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

30 **76-5-205.5. Special mitigation reducing the level of criminal homicide offense --**  
 31 **burden of proof -- application to reduce offense.**

1           (1) Special mitigation exists under the circumstances described in this Subsections (1).

2           (a) Special mitigation exists when the actor causes the death of another under the influence  
3 of extreme emotional distress for which there is a reasonable explanation or excuse.

4           (i) The reasonableness of an explanation or excuse shall be determined from the objective  
5 viewpoint of a reasonable person under the then existing circumstances.

6           (ii) Emotional distress under this Subsection (1) does not include a condition resulting  
7 from mental illness as defined in Section 76-2-305.

8           (b) (i) Special mitigation exists when the actor causes the death of another and the actor  
9 reasonably believes the circumstances provide a legal justification or excuse for his conduct,  
10 although the conduct is not legally justifiable or excusable under the existing circumstances.

11           (ii) The reasonable belief of the actor shall be determined from the objective viewpoint  
12 of a reasonable person under the then existing circumstances.

13           (c) (i) Special mitigation exists when the actor causes the death of another under  
14 circumstances that are not legally justified, but the actor:

15           (A) acts under a delusion attributable to a mental illness as defined in Section 76-2-305;  
16 and

17           (B) the nature of the delusion is such that, if the facts existed as the defendant believed  
18 them to be in his delusional state, those facts would provide a legal justification or excuse for his  
19 conduct.

20           (ii) The defendant must show that his actions in light of the delusion were reasonable from  
21 the objective viewpoint of a reasonable person.

22           (2) The defense bears the burden of proving by a preponderance of the evidence the special  
23 mitigation specified in Subsection (1), unless the special mitigation is established by stipulation.

24           (3) (a) When the issue of special mitigation is submitted to the finder of fact, a special  
25 verdict shall be returned indicating whether the existence of special mitigation has been proven.

26           (b) If a jury is the trier of fact, a unanimous vote of the jury is required to establish the  
27 existence of the special mitigation.

28           (c) The trier of fact shall return the special verdict at the same time as the general verdict.

29           (4) If the prosecution has established beyond a reasonable doubt the elements of:

30           (a) aggravated murder, but the defense has established by a preponderance of the evidence  
31 the special mitigation specified in Subsection (1), the defendant shall be found guilty of murder

1 rather than aggravated murder;

2 (b) attempted aggravated murder, but the defense has established by a preponderance of  
3 the evidence the special mitigation specified in Subsection (1), the defendant shall be found guilty  
4 of attempted murder rather than attempted aggravated murder;

5 (c) murder, but the defense has established by a preponderance of the evidence the special  
6 mitigation specified in Subsection (1), the defendant shall be found guilty of manslaughter rather  
7 than murder; or

8 (d) attempted murder, but the defense has established by a preponderance of the evidence  
9 the special mitigation specified in Subsection (1), the defendant shall be found guilty of attempted  
10 manslaughter rather than attempted murder.

11 (5) In no case does special mitigation under this section reduce the level of offense more  
12 than one degree from that offense which the prosecution has established by proof beyond a  
13 reasonable doubt.

14 (6) An actor who was under the influence of voluntarily consumed, injected, or ingested  
15 alcohol, controlled substances, or volatile substances at the time of the alleged offense may not  
16 mitigate the offense under Subsection (1)(c) on the basis of mental illness if the alcohol or  
17 substance caused, triggered, or substantially contributed to the mental illness.

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

19 **77-14-4. Insanity or diminished mental capacity -- Notice requirement.**

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

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

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

29 **77-16a-301. Mental examination of defendant**

30 (1) When the court receives notice that a defendant intends to claim that he is not guilty  
31 by reason of insanity or that he had diminished mental capacity, or that he intends to assert special

1 mitigation under Subsection 76-5-205.5(1)(c), the court shall order the Department of Human  
2 Services to examine the defendant and investigate his mental condition. The person or  
3 organization directed by the department to conduct the examination shall testify at the request of  
4 the court or either party in any proceeding in which the testimony is otherwise admissible.  
5 Pending trial, unless the court or the executive director directs otherwise, the defendant shall be  
6 retained in the same custody or status he was in at the time the examination was ordered.

7 (2) The defendant shall make himself available and fully cooperate in the examination by  
8 the department and any other independent examiners for the defense and the prosecuting attorney.  
9 If the defendant fails to make himself available and fully cooperate, and that failure is established  
10 to the satisfaction of the court at a hearing prior to trial, the defendant is barred from presenting  
11 expert testimony relating to his defense of mental illness at the trial of the case. The department  
12 shall complete the examination within 30 days after the court's order, and shall prepare and provide  
13 to the court prosecutor and defense counsel a written report concerning the condition of the  
14 defendant.

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

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

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

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

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

**Legislative Review Note**  
**as of 11-25-97 2:45 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**