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29 *Be it enacted by the Legislature of the state of Utah:*30 Section 1. Section **76-5-205.5** is amended to read:31 **76-5-205.5. Special mitigation reducing the level of criminal homicide offense --**
32 **Burden of proof -- Application to reduce offense.**33 (1) Special mitigation exists when the actor causes the death of another or attempts to
34 cause the death of another:35 (a) (i) under circumstances that are not legally justified, but the actor acts under a
36 delusion attributable to a mental illness as defined in Section 76-2-305;37 (ii) the nature of the delusion is such that, if the facts existed as the [defendant] actor
38 believed them to be in the delusional state, those facts would provide a legal justification for
39 the [defendant's] actor's conduct; and40 (iii) the [defendant's] actor's actions, in light of the delusion, were reasonable from the
41 objective viewpoint of a reasonable person; or42 (b) under the influence of extreme emotional distress for which there is a reasonable
43 explanation or excuse.44 (2) (a) Except as provided in Subsections (2)(b) and (c), an actor is under the influence
45 of extreme emotional distress for which there is a reasonable explanation or excuse under
46 Subsection (1)(b) if:47 (i) the actor experiences:48 (A) extremely unusual and overwhelming stress immediately after and ~~H~~→ [solely]
49a predominantly ←~~H~~ as a result
49 of a highly provoking act of the victim; and50 (B) ~~H~~→ [a] an overwhelming ←~~H~~ loss of self-control as a result of the stress described
50a in Subsection (2)(a)(i)(A)
51 that is not regained before the actor commits the offense;52 (ii) a reasonable person under the circumstances described in Subsection (2)(a)(i)(A)
53 would have experienced ~~H~~→ [a] an overwhelming ←~~H~~ loss of self-control; and54 (iii) the time period after the circumstances described in Subsection (2)(a)(i) and before
55 the commission of the offense was not long enough for a reasonable person under the same
56 circumstances to have regained self-control.57 (b) Under Subsection (1)(b), emotional distress does not include:58 (i) a condition resulting from mental illness as defined in Section 76-2-305; or

59 (ii) ~~It~~ **→** [distress that was] extremely unusual and overwhelming stress that is ~~←~~ **It**
 59a substantially caused by the:

60 (A) actor's own conduct;

61 (B) victim's termination of or request to terminate the victim's relationship with the
 62 actor; or

63 (C) victim's words or statements alone.

64 (c) An actor may not claim special mitigation under Subsection (1)(b) on the basis of
 65 extreme emotional distress if the actor responded to the stress described in Subsection
 66 (2)(a)(i)(A) by inflicting serious or substantial bodily injury on the victim over a prolonged
 67 period of time, or inflicting physical torture on the victim, regardless of whether the victim was
 68 conscious during the infliction of serious or substantial bodily injury or torture.

69 ~~[(2)]~~ (3) A defendant who was under the influence of voluntarily consumed, injected,
 70 or ingested alcohol, controlled substances, or volatile substances at the time of the ~~[alleged]~~
 71 offense may not claim mitigation of the offense under Subsection (1)~~[(a)]~~ on the basis of
 72 mental illness or extreme emotional distress if the alcohol or substance caused, triggered, or
 73 substantially contributed to the mental illness or extreme emotional distress.

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

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

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

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

79 ~~[(5)]~~ (4) (a) If the trier of fact finds that the elements of an offense as listed in
 80 Subsection ~~[(5)]~~ (4)(b) are proven beyond a reasonable doubt, and also finds that the existence
 81 of special mitigation under this section is established by a preponderance of the evidence, it
 82 shall return a verdict on the reduced charge as provided in Subsection ~~[(5)]~~ (4)(b).

83 (b) If under Subsection ~~[(5)]~~ (4)(a) the offense is:

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

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

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

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

90 (c) If the trier of fact finds that special mitigation has not been established, the trier of
 91 fact shall convict the defendant of the ~~H~~→ [greater] ←~~H~~ offense for which the prosecution has
 91a established
 92 all the elements beyond a reasonable doubt.

93 [~~(6)~~] (5) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to
 94 establish the existence of the special mitigation.

95 (b) If the jury [~~does find~~] finds special mitigation by a unanimous vote, [~~it~~] the jury
 96 shall return a verdict on the reduced charge as provided in Subsection [~~(5)~~] (4).

97 (c) If the jury finds by a unanimous vote that special mitigation has not been
 98 established, [~~it~~] or the jury is unable to unanimously agree whether special mitigation has been
 99 established, the jury shall convict the defendant of the ~~H~~→ [greater] ←~~H~~ offense for
 99a which the prosecution
 100 has established all the elements beyond a reasonable doubt.

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

103 [~~(7)~~] (6) (a) If the issue of special mitigation is submitted to the trier of fact, [~~it~~] the
 104 jury shall return a special verdict indicating whether the existence of special mitigation has
 105 been found.

106 (b) The trier of fact shall return the special verdict at the same time as the general
 107 verdict, to indicate the basis for its general verdict.

108 [~~(8)~~] (7) Special mitigation under this section does not, in any case, reduce the level of
 109 an offense by more than one degree from that offense, the elements of which the evidence has
 110 established beyond a reasonable doubt.

Legislative Review Note
Office of Legislative Research and General Counsel