

Representative Andrew Stoddard proposes the following substitute bill:

MURDER MITIGATION AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill relates to special mitigation of the penalty for a criminal homicide offense.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the circumstances under which a defendant's extreme emotional distress is special mitigation of the penalty for a criminal homicide offense;
- ▶ modifies the consequences in a criminal trial if the jury is unable to unanimously agree that special mitigation based on the defendant's extreme emotional distress or mental illness is established; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-205.5, as last amended by Laws of Utah 2009, Chapter 206



26 [77-14-4](#), as last amended by Laws of Utah 2009, Chapter 206
 27 [77-16a-102](#), as last amended by Laws of Utah 2011, Chapter 366
 28 [77-16a-301](#), as last amended by Laws of Utah 2009, Chapter 206

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **76-5-205.5** is amended to read:

32 **76-5-205.5. Special mitigation for mental illness or provocation reducing the level**
 33 **of criminal homicide offense -- Burden of proof -- Application to reduce offense.**

34 (1) As used in this section:

35 (a) (i) "Extreme emotional distress" means an overwhelming reaction of anger, shock,
 36 or grief that:

37 (A) causes the defendant to be incapable of reflection and restraint; and

38 (B) would cause an objectively reasonable person to be incapable of reflection and
 39 restraint.

40 (ii) "Extreme emotional distress" does not include:

41 (A) a condition resulting from mental illness; or

42 (B) distress that is substantially caused by the defendant's own conduct.

43 (b) "Mental illness" means the same as that term is defined in Section [76-2-305](#).

44 ~~[(+)]~~ (2) Special mitigation exists when ~~[the actor]~~ a defendant causes the death of
 45 another or attempts to cause the death of another:

46 (a) (i) under circumstances that are not legally justified, but the ~~[actor]~~ defendant acts
 47 under a delusion attributable to a mental illness ~~[as defined in Section [76-2-305](#)];~~

48 (ii) the nature of the delusion is such that, if the facts existed as the defendant believed
 49 them to be in the delusional state, those facts would provide a legal justification for the
 50 defendant's conduct; and

51 (iii) the defendant's actions, in light of the delusion, ~~[were]~~ are reasonable from the
 52 objective viewpoint of a reasonable person; or

53 (b) except as provided in Subsection (4), under the influence of extreme emotional
 54 distress ~~[for which there is a reasonable explanation or excuse]~~ that is predominantly caused by
 55 the victim's highly provoking act immediately preceding the defendant's actions.

56 ~~[(2)]~~ (3) A defendant who ~~[was]~~ is under the influence of voluntarily consumed,

57 injected, or ingested alcohol, controlled substances, or volatile substances at the time of the
 58 alleged offense may not claim mitigation of the offense under Subsection [(+) (2)(a) on the
 59 basis of mental illness if the alcohol or substance [~~caused, triggered, or substantially~~
 60 ~~contributed to the~~] causes, triggers, or substantially contributes to the defendant's mental
 61 illness.

62 [~~(3) Under Subsection (1)(b), emotional distress does not include:~~
 63 [~~(a) a condition resulting from mental illness as defined in Section 76-2-305; or~~
 64 [~~(b) distress that is substantially caused by the defendant's own conduct.~~]
 65 [~~(4) The reasonableness of an explanation or excuse under Subsection (1)(b) shall be~~
 66 ~~determined from the viewpoint of a reasonable person under the then existing circumstances.]~~

67 (4) A defendant may not claim special mitigation under Subsection (2)(b) if:
 68 (a) the time period after the victim's highly provoking act and before the defendant's
 69 actions was long enough for an objectively reasonable person to have recovered from the
 70 extreme emotional distress;

71 (b) the defendant responded to the victim's highly provoking act by inflicting serious or
 72 substantial bodily injury on the victim over a prolonged period, or by inflicting torture on the
 73 victim, regardless of whether the victim was conscious during the infliction of serious or
 74 substantial bodily injury or torture; or

75 (c) the victim's highly provoking act, described in Subsection (2)(b), is comprised of
 76 words alone.

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

81 (b) If under Subsection (5)(a) the offense is:
 82 (i) aggravated murder, the defendant shall instead be found guilty of murder;
 83 (ii) attempted aggravated murder, the defendant shall instead be found guilty of
 84 attempted murder;
 85 (iii) murder, the defendant shall instead be found guilty of manslaughter; or
 86 (iv) attempted murder, the defendant shall instead be found guilty of attempted
 87 manslaughter.

88 (c) If the trier of fact finds that special mitigation is not established under this section,
89 the trier of fact shall convict the defendant of the offense for which the prosecution proves all
90 the elements beyond a reasonable doubt.

91 (6) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish
92 the existence of the special mitigation under this section.

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

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

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

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

104 (b) The trier of fact shall return the special verdict at the same time as the general
105 verdict, to indicate the basis for [~~its~~] the general verdict.

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

109 Section 2. Section **77-14-4** is amended to read:

110 **77-14-4. Insanity or diminished mental capacity -- Notice requirement.**

111 (1) If a defendant [~~proposes~~] intends to offer evidence that the defendant is not guilty
112 as a result of insanity or that the defendant had diminished mental capacity, or [~~proposes~~]
113 intends to offer evidence in mitigation of a criminal homicide or attempted criminal homicide
114 offense under Subsection **76-5-205.5**[(+)](2)(a), the defendant shall file and serve the
115 prosecuting attorney with written notice of the intention to claim the defense at the time of
116 arraignment or as soon afterward as practicable, but not [~~fewer~~] less than 30 days before the
117 trial.

118 (2) If the court receives notice that a defendant intends to claim that the defendant is

119 not guilty by reason of insanity or that the defendant had diminished mental capacity, the court
120 shall proceed in accordance with the requirements described in Section 77-16a-301.

121 Section 3. Section 77-16a-102 is amended to read:

122 **77-16a-102. Jury instructions.**

123 (1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall
124 instruct the jury that [it] the jury may find the defendant:

125 (a) guilty;

126 (b) guilty with a mental illness at the time of the offense;

127 (c) guilty of a lesser offense;

128 (d) guilty of a lesser offense with a mental illness at the time of the offense;

129 (e) not guilty by reason of insanity; or

130 (f) not guilty.

131 (2) (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or
132 asserts special mitigation reducing the level of an offense pursuant to Subsection
133 76-5-205.5~~(1)~~(2)(a), or when the evidence raises the issue and either party requests the
134 instruction, the ~~[jury shall be instructed that if it]~~ court shall instruct the jury that if the jury
135 finds a defendant guilty by proof beyond a reasonable doubt of ~~[any]~~ a charged offense or lesser
136 included offense, [it] the jury shall also return a special verdict indicating whether [it] the jury
137 finds that the defendant had a mental illness at the time of the offense.

138 (b) If the jury finds the defendant guilty of the charged offense by proof beyond a
139 reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of
140 the offense, [it] the jury shall return the general verdict of "guilty with a mental illness at the
141 time of the offense."

142 (c) If the jury finds the defendant guilty of a lesser offense by proof beyond a
143 reasonable doubt, and by special verdict finds the defendant had a mental illness at the time of
144 the offense, [it] the jury shall return the general verdict of "guilty of a lesser offense with a
145 mental illness at the time of the offense."

146 (d) If the jury finds the defendant guilty of the charged offense or a lesser included
147 offense and does not find that the defendant had a mental illness at the time of the offense, the
148 jury shall return a verdict of "guilty" of ~~[that]~~ the offense, along with the special verdict form
149 indicating that the jury did not find that the defendant had a mental illness at the time of the

150 offense.

151 (e) The special verdict shall be returned by the jury at the same time as the general
152 verdict, to indicate the basis for ~~[its]~~ the jury's general verdict.

153 (3) (a) In determining whether a defendant should be found guilty with a mental illness
154 at the time of the offense, the ~~[jury shall be instructed]~~ court shall instruct the jury that the
155 standard of proof applicable to a finding of mental illness is by a preponderance of the
156 evidence. ~~[The jury shall also be instructed]~~

157 (b) The court shall also instruct the jury that the standard of preponderance of the
158 evidence does not apply to the elements establishing a defendant's guilt, and that the proof of
159 the elements establishing a defendant's guilt of ~~[any]~~ an offense must be proven beyond a
160 reasonable doubt.

161 (4) (a) When special mitigation based on extreme emotional distress is at issue
162 pursuant to Subsection ~~76-5-205.5(1)(2)(b)~~, the jury shall, in addition to ~~[its]~~ the jury's
163 general verdict, return a special verdict.

164 (b) The special verdict shall be returned by the jury at the same time as the general
165 verdict, to indicate the basis for ~~[its]~~ the jury's general verdict.

166 Section 4. Section ~~77-16a-301~~ is amended to read:

167 **~~77-16a-301. Mental examination of defendant.~~**

168 (1) (a) When the court receives notice that a defendant intends to claim that the
169 defendant is not guilty by reason of insanity or that the defendant had diminished mental
170 capacity, or that the defendant intends to assert special mitigation under Subsection
171 ~~76-5-205.5(1)(2)(a)~~, the court shall order the ~~[Department of Human Services]~~ department to
172 examine the defendant and investigate the defendant's mental condition.

173 (b) The person or organization directed by the department to conduct the examination
174 shall testify at the request of the court or either party in ~~[any]~~ a proceeding in which the
175 testimony is otherwise admissible.

176 (c) Pending trial, unless the court or the executive director directs otherwise, the
177 defendant shall be retained in the same custody or status the defendant was in at the time the
178 examination was ordered.

179 (2) (a) The defendant shall be available and shall fully cooperate in the examination by
180 the department and ~~[any]~~ other independent examiners for the defense and the prosecuting

181 attorney.

182 (b) If the defendant fails to be available and to fully cooperate, and that failure is
183 established to the satisfaction of the court at a hearing prior to trial, the defendant is barred
184 from presenting expert testimony relating to the defendant's defense of mental illness at the
185 trial of the case.

186 (c) The department shall complete the examination within 30 days after the court's
187 order, and shall prepare and provide to the court prosecutor and defense counsel a written
188 report concerning the condition of the defendant.

189 (3) Within 10 days after receipt of the report described in Subsection (2)(c) from the
190 department, but not later than five days before the trial of the case, or at any other time the
191 court directs, the prosecuting attorney shall file and serve upon the defendant a notice of
192 rebuttal of the defense of mental illness, which shall contain the names of witnesses the
193 prosecuting attorney proposes to call in rebuttal.

194 (4) The ~~[reports of any other]~~ report of another independent examiner ~~[are]~~ is
195 admissible as evidence upon stipulation of the prosecution and defense.

196 (5) (a) This section does not prevent ~~[any]~~ a party from producing ~~[any]~~ other
197 testimony as to the mental condition of the defendant. ~~[Expert witnesses who are]~~

198 (b) An expert witness who is not appointed by the court ~~[are]~~ is not entitled to
199 compensation under Subsection (7).

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

201 ~~[(7) Expenses of examination ordered by the court under this section shall be paid by~~
202 ~~the Department of Human Services. Travel expenses associated with the examination incurred~~
203 ~~by the defendant shall be charged by the department to the county where prosecution is~~
204 ~~commenced. Examination of defendants charged with violation of municipal or county~~
205 ~~ordinances shall be charged by the department to the entity commencing the prosecution.]~~

206 (7) (a) The department shall pay the expenses of an examination ordered by the court
207 under this section.

208 (b) The department shall charge the county where the prosecution is commenced for
209 travel expenses associated with an examination incurred by a defendant.

210 (c) The department shall charge the entity commencing the prosecution for an
211 examination of a defendant charged with a violation of a municipal or county ordinance.