

**Representative Sahara Hayes** proposes the following substitute bill:

**LIMITATION ON SPECIAL MITIGATION BASED ON VICTIM**

**IDENTITY**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Sahara Hayes**

Senate Sponsor: Todd D. Weiler

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**LONG TITLE**

**General Description:**

This bill prohibits the use of special mitigation to reduce a criminal homicide offense based on a victim's sex, gender identity, or sexual orientation.

**Highlighted Provisions:**

This bill:

- ▶ prohibits an actor from using a victim's sex, gender identity, or sexual orientation as a special mitigation to reduce an offense of criminal homicide or attempted criminal homicide; and
- ▶ makes technical and conforming 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 2023, Chapter 184

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

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

28 **76-5-205.5. Special mitigation for mental condition or provocation -- Burden of**  
29 **proof -- Charge reduction.**

30 (1) (a) As used in this section:

31 (i) (A) "Extreme emotional distress" means an overwhelming reaction of anger, shock,  
32 or grief that:

33 (I) causes the defendant to be incapable of reflection and restraint; and

34 (II) would cause an objectively reasonable person to be incapable of reflection and  
35 restraint.

36 (B) "Extreme emotional distress" does not include:

37 (I) a condition resulting from a mental condition; [~~or~~]

38 (II) distress that is substantially caused by the defendant's own conduct[~~;~~]; or

39 (III) distress caused by the defendant's discovery, defendant's knowledge, or the  
40 disclosure of the victim's actual or perceived sex, gender identity, or sexual orientation,  
41 including under circumstances in which the victim made an unwanted nonforcible romantic or  
42 sexual advance toward the defendant.

43 (ii) "Mental condition" means the same as that term is defined in Section **76-2-305**.

44 (b) The terms defined in Section **76-1-101.5** apply to this section.

45 (2) Special mitigation exists when a defendant causes the death of another individual or  
46 attempts to cause the death of another individual:

47 (a) (i) under circumstances that are not legally justified, but the defendant acts under a  
48 delusion attributable to a mental condition;

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

52 (iii) the defendant's actions, in light of the delusion, are reasonable from the objective  
53 viewpoint of a reasonable person; or

54 (b) except as provided in Subsection (4), under the influence of extreme emotional  
55 distress that is predominantly caused by the victim's highly provoking act immediately  
56 preceding the defendant's actions.

57 (3) A defendant who is under the influence of voluntarily consumed, injected, or  
58 ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense  
59 may not claim mitigation of the offense under Subsection (2)(a) on the basis of a mental  
60 condition if the alcohol or substance causes, triggers, or substantially contributes to the  
61 defendant's mental condition.

62 (4) A defendant may not claim special mitigation under Subsection (2)(b) if:

63 (a) the time period after the victim's highly provoking act and before the defendant's  
64 actions was long enough for an objectively reasonable person to have recovered from the  
65 extreme emotional distress;

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

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

72 (5) If the trier of fact finds that the elements of aggravated murder, attempted  
73 aggravated murder, murder, or attempted murder are proven beyond a reasonable doubt, and  
74 also finds that the existence of special mitigation under this section is established by a  
75 preponderance of the evidence, the court shall enter a judgment of conviction in accordance  
76 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),  
77 respectively.

78 (6) If the issue of special mitigation is submitted to the trier of fact, the trier of fact  
79 shall return a special verdict at the same time as the general verdict, indicating whether it finds  
80 special mitigation.

81 (7) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to find  
82 special mitigation under this section.

83 (b) If the jury unanimously finds that the elements of an offense described in  
84 Subsection (5) are proven beyond a reasonable doubt, and finds special mitigation by a  
85 unanimous vote, the jury shall return a general verdict finding the defendant guilty of the  
86 charged crime and a special verdict indicating special mitigation.

87 (c) If the jury unanimously finds that the elements of an offense described in

88 Subsection (5) are proven beyond a reasonable doubt but finds by a unanimous vote that  
89 special mitigation is not established, or if the jury is unable to unanimously agree that special  
90 mitigation is established, the jury shall convict the defendant of the greater offense for which  
91 the prosecution proves all the elements beyond a reasonable doubt.

92 Section 2. **Effective date.**

93 This bill takes effect on May 1, 2024.