

BATTERED PERSON MITIGATION AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill provides for mitigation of certain criminal charges related to cohabitant abuse.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides for an offense reduction for an individual convicted of an offense if the individual committed the offense as a result of cohabitant abuse; and
- ▶ provides procedures for proving and finding an individual is entitled to the offense reduction in court.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

76-2-409, Utah Code Annotated 1953

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

Section 1. Section **76-2-409** is enacted to read:

76-2-409. Battered person mitigation.

(1) As used in this section:

(a) "Abuse" means the same as that term is defined in Section **78B-7-102**.

(b) "Cohabitant" means:

(i) the same as that term is defined in Section 78B-7-102; or

(ii) the relationship of a minor and a natural parent, an adoptive parent, a stepparent, or an individual living with the minor's natural parent as if a stepparent to the minor.

(2) (a) An individual is entitled to battered person mitigation if:

(i) the individual committed a criminal offense that was not legally justified;

(ii) the individual committed the criminal offense against a cohabitant who demonstrated a pattern of abuse against the individual or another cohabitant of the individual; and

(iii) the individual reasonably believed that the criminal offense was necessary to end the pattern of abuse.

(b) A reasonable belief under Subsection (2)(a) is determined from the viewpoint of a reasonable person in the individual's circumstances, as the individual's circumstances are perceived by the individual.

(3) An individual claiming mitigation under Subsection (2)(a) has the burden of proving, by clear and convincing evidence, each element that would entitle the individual to mitigation under Subsection (2)(a).

(4) Mitigation under Subsection (2)(a) results in a one-step reduction of the level of offense of which the individual is convicted.

(5) (a) If the trier of fact is a jury, an individual is not entitled to mitigation under Subsection (2)(a) unless the jury:

(i) finds the individual proved, in accordance with Subsection (3), that the individual is entitled to mitigation by unanimous vote; and

(ii) returns a special verdict for the reduced charge at the same time the jury returns the general verdict.

(b) A nonunanimous vote by the jury on the question of mitigation under Subsection (2)(a) does not result in a hung jury.

(6) An individual intending to claim mitigation under Subsection (2)(a) at the

- 58 individual's trial shall give notice of the individual's intent to claim mitigation under
59 Subsection (2)(a) to the prosecuting agency at least 30 days before the individual's trial.