

Effective 5/14/2019

Superseded 5/3/2023

77-16a-102 Jury instructions.

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

- (a) guilty;
- (b) guilty with a mental illness at the time of the offense;
- (c) guilty of a lesser offense;
- (d) guilty of a lesser offense with a mental illness at the time of the offense;
- (e) not guilty by reason of insanity; or
- (f) not guilty.

(2)

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

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

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

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

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

(3)

(a) In determining whether a defendant should be found guilty with a mental illness at the time of the offense, the court shall instruct the jury that the standard of proof applicable to a finding of mental illness is by a preponderance of the evidence.

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

(4)

(a) When special mitigation based on extreme emotional distress is at issue pursuant to Subsection 76-5-205.5(2)(b), the jury shall, in addition to the jury's general verdict, return a special verdict.

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