

Superseded 5/14/2019

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 it 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(1)(a), or when the evidence raises the issue and either party requests the instruction, the jury shall be instructed that if it finds a defendant guilty by proof beyond a reasonable doubt of any charged offense or lesser included offense, it shall also return a special verdict indicating whether it 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, it 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, it 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 that 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 its general verdict.
- (3) In determining whether a defendant should be found guilty with a mental illness at the time of the offense, the jury shall be instructed that the standard of proof applicable to a finding of mental illness is by a preponderance of the evidence. The jury shall also be instructed 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 any 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(1)(b), the jury shall, in addition to its 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 its general verdict.