

Mitigating / Extenuating circumstances

in criminal law, conditions or happenings which do not excuse or justify criminal conduct, but are considered out of mercy or fairness in deciding the degree of the offense the prosecutor charges or influencing reduction of the penalty upon conviction. Example: a young man shoots his father after years of being beaten, belittled, sworn at and treated without love. "Heat of passion" or "diminished capacity" are forms of such mitigating circumstances

- The circumstances of the crime and the existence of special circumstances.
- The presence or absence of violent criminal activity by the defendant.
- The presence or absence of any prior felony convictions.
- Whether the crime was committed while the defendant was under the influence of extreme mental or emotional disorder.
- Whether the victim was a participant in the defendant's homicidal conduct or consented to the killing.
- Whether the crime was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.
- Whether the defendant acted under extreme duress or under the substantial domination of another person.
- Whether at the time of the crime the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was impaired as a result of mental disease or defect, or the effect of intoxication.
- The age of the defendant at the time of the crime.
- Whether the defendant was an accomplice to the crime and his participation was relatively minor.
- Any other circumstances which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

Heat of Passion Upon Reasonable Provocation

Heat of Passion is a state of mind of passion, anger, fear, fright and nervous excitement.

Reasonable Provocation is provocation of the type that would likely produce in a reasonable person such a state of passion, anger, fear, fright or nervous excitement as would overcome his or her capacity for reflection or restraint and does actually produce such a state of mind in the defendant.

The provocation must be such that a reasonable person would have become sufficiently provoked and would not have cooled off by the time of the killing, and that the defendant was so provoked and did not cool off by the time of the killing.

In addition, there must be a causal connection between the provocation, the state of heat of passion and the killing. The killing must follow the provocation before there is sufficient time for the emotion to cool and must be the result of the state of mind induced by the provocation rather than a preexisting intent to kill or injure.

Mere words, no matter how insulting or abusive, standing alone, do not constitute a reasonable provocation.

Physical combat, even a single blow, may amount to a reasonable provocation. Whether the contact is sufficient depends on whether a reasonable person under similar circumstances would have been provoked to act out of emotion rather than reasoned reflection.

The heat of passion must also be sudden; that is, the killing must have occurred before a reasonable person would have regained his or her emotions.

Because the prosecutor is required to prove, beyond a reasonable doubt, that the defendant committed an unlawful killing with malice, and has not proved the absence of any mitigating circumstances, the jury must find the defendant 'not guilty' of [Murder](#).

- **Heat of Passion Induced by Sudden Combat**

Sudden combat involves a mutual and sudden assault by both the deceased and the defendant. In sudden combat, physical contact, even a single blow, may amount to reasonable provocation. Whether the contact is sufficient depends on whether a reasonable person under similar circumstances would have been provoked to act out of emotion rather than reasoned reflection.

- **Excessive Use of Force in Self-Defense or Defense of Another**

Where the affirmative defense of Self-Defense is raised, the prosecutor has the burden of proving, beyond a reasonable doubt, the absence of self-defense. If the defendant took action to defend himself, but the force he used was 'excessive', he could still be found guilty of the crime(s) charged. If, however, the prosecutor is unable to prove the absence of self-defense, the jury is instructed that they must

return a verdict of 'not guilty'.

A homicide is excused, and therefore not a crime, if it results from the proper exercise of self-defense.

- In order to defend oneself with a dangerous weapon, the person using the weapon or deadly force must have a reasonable apprehension of great bodily harm or death and a reasonable belief that no other means would suffice to prevent such harm. In other words, the proper exercise of self-defense means that a person in the defendant's circumstances would reasonably believe that he was about to be attacked and that he was in immediate danger of being killed or seriously injured, and that there was no other way to avoid the attack.

On the issue of self-defense, *a person may use no more force than is reasonably necessary in all of the circumstances to defend himself.*

An individual being attacked or about to be attacked may use only sufficient force to prevent the occurrence or reoccurrence of the attack. Massachusetts law does not permit a person to use force in self-defense until he has availed himself of all proper means to avoid physical combat.

A person who is lawfully occupying a house, however, is not required to retreat or use other means of avoiding combat before using reasonable force against an unlawful intruder if the person reasonably believes, even mistakenly believes, that the intruder is about to kill or seriously injure him or another occupant and also reasonably believes that such force is necessary to protect himself or another occupant. With regard to the issue of the reasonableness of a defendant's belief and whether a defendant actually believed that he was in imminent danger of serious bodily injury or death, the jury is permitted to consider circumstances bearing on the issue of a defendant's state of mind; the deceased person's reputation as a violent or quarrelsome person; and any recent acts of violence.

- Adultery-Related Crimes
- One of the most infamous crimes of passion scenarios starts with a husband or wife discovering a spouse committing adulterous acts with another person. The husband, enraged by what he has witnessed, reaches for the nearest weapon or object, and presumably before he is able to contemplate his actions, murders his wife or her lover, or both. Defendants in these scenarios will typically say that they were so enraged by the events unfolding in

front of them that they succumbed to temporary insanity and were unable to control their behavior.

Bitter Disagreements

- Arguing over sensitive topics, such as relationships, sexuality and legal issues, can also result in crimes of passion scenarios. Overblown and excessively aggressive arguments are often predecessors to violence, particularly domestic violence. Similar to the adultery-related crimes of passion, defenders in these scenarios may try to reduce their sentencing by pleading that the murder or other violent act in question was the result of a temporary, uncontrollable state of rage. The New York Daily News notes that in 2010, a man stabbed and killed his estranged wife in Georgia during an argument concerning the custody of their children.

Revenge/Retaliation

- While some may think of revenge and retaliation murders as premeditated crimes, some revenge scenarios can also be sudden, and are the result of unexpected provocations or encounters. Berkeley Law gives the examples of a husband unexpectedly bumping into the rapist of his wife, or a father unexpectedly encountering the murderer of his child. In both instances, a defendant who commits a violent act against, or murders, such a person may claim that he was suddenly and uncontrollably enraged by the emotionally charged situation, and was not responsible for his actions.