

**Effective 5/6/2026**

**76-3-207 Capital felony -- Sentencing proceeding -- Appeals.**

- (1)
  - (a) When a defendant has pled guilty to or been found guilty of a capital felony, a further proceeding shall be conducted on the issue of the defendant's sentence for the capital felony.
  - (b) When a defendant has pled guilty to a capital felony, the sentencing proceeding described in Subsection (1)(a) is conducted before:
    - (i) a jury; or
    - (ii) upon request of the defendant and with the approval of the court and the consent of the prosecution, the court that accepted the plea.
  - (c)
    - (i) When a defendant has been found guilty of a capital felony, the sentencing proceeding described in Subsection (1)(a) is conducted before:
      - (A) the jury that found the defendant guilty; or
      - (B) the court upon a waiver by the defendant of the sentencing proceeding being conducted before a jury, with approval of the court and the consent of the prosecution.
    - (ii) If circumstances make it impossible or impractical to continue with the same jury for the sentencing proceeding, the court may dismiss that jury and convene a new jury for the proceeding.
  - (d) If a retrial of the sentencing proceeding is necessary as a consequence of a remand from an appellate court, the sentencing authority is determined in accordance with Subsection (13).
- (2)
  - (a) In a sentencing proceeding described in Subsection (1)(a), evidence may be presented on:
    - (i) the nature and circumstances of the crime;
    - (ii) the defendant's character, background, history, and mental and physical condition;
    - (iii) the victim and the impact of the crime on the victim's family and community without comparison to other persons or victims; and
    - (iv) any other facts in aggravation or mitigation of the penalty that are relevant to the sentence.
  - (b)
    - (i) Any evidence the court considers to have probative force may be received regardless of the evidence's admissibility under the rules of evidence.
    - (ii) The prosecuting attorney and the defendant shall be permitted to present argument for or against the sentence of death.
- (3) Aggravating circumstances include those outlined in Section 76-5-202.
- (4)
  - (a) As used in this Subsection (4), "mental condition" does not include an abnormality manifested primarily by repeated criminal conduct.
  - (b) Mitigating circumstances include:
    - (i) the defendant has no significant history of prior criminal activity;
    - (ii) the homicide was committed while the defendant was under the influence of mental or emotional disturbance;
    - (iii) the defendant acted under duress or under the domination of another person;
    - (iv) at the time of the homicide, the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirement of law was impaired as a result of a mental condition, intoxication, or influence of drugs;
    - (v) the youth of the defendant at the time of the crime;
    - (vi) the defendant was an accomplice in the homicide committed by another individual and the defendant's participation was relatively minor; and

- (vii) any other fact in mitigation of the penalty.
- (5) The court or jury, as the case may be, shall retire to consider the defendant's sentence.
- (6)
  - (a) Except as provided in Subsections 76-3-206(2)(b) and 76-3-207.5(2), the court shall instruct a jury in a sentencing proceeding for a capital felony on the punishment to be imposed in accordance with this Subsection (6).
  - (b) The sentence of death shall only be imposed if, after considering the totality of the aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that:
    - (i) total aggravation outweighs total mitigation; and
    - (ii) the imposition of the sentence of death is justified and appropriate in the circumstances.
  - (c) If the jury reports a unanimous decision to impose the sentence of death, the court shall:
    - (i) discharge the jury; and
    - (ii) impose the sentence of death.
  - (d) If the jury is unable to reach a unanimous decision imposing the sentence of death, the jury shall determine whether the penalty of life in prison without parole shall be imposed, except as provided in Subsection 76-3-207.5(2).
  - (e) The penalty of life in prison without parole shall only be imposed if the jury determines that the sentence of life in prison without parole is appropriate.
  - (f) If the jury reports agreement by 10 jurors or more to impose the sentence of life in prison without parole, the court shall:
    - (i) discharge the jury; and
    - (ii) impose the sentence of life in prison without parole.
  - (g) If 10 jurors or more do not agree upon a sentence of life in prison without parole, the court shall:
    - (i) discharge the jury; and
    - (ii) impose an indeterminate prison term of not less than 25 years and which may be for life.
- (7) If the sentencing proceeding described in Subsection (1)(a) is conducted before the court as described in Subsection (1)(b) or (c), the court shall determine the appropriate penalty according to the standards of Subsection (6).
- (8) If the defendant is sentenced to more than one term of life in prison with or without the possibility of parole, or in addition to a sentence of life in prison with or without the possibility of parole the defendant is sentenced for other offenses that result in terms of imprisonment, the court shall determine whether the terms of imprisonment shall be imposed as concurrent or consecutive sentences in accordance with Section 76-3-401.
- (9)
  - (a) If a defendant is sentenced to death, the court shall:
    - (i) advise the defendant, at the sentencing proceeding, of the defendant's right to a direct appeal and of the provisions for postconviction relief in Title 78B, Chapter 9, Part 1, General Provisions; and
    - (ii) appoint appellate counsel for the defendant in accordance with the requirements for a capital case under Rule 8 of the Utah Rules of Criminal Procedure and Title 78B, Chapter 22, Indigent Defense Act.
  - (b) Subsection (9)(a)(ii) does not prevent the defendant from obtaining private counsel or waiving the appointment of appellate counsel.
- (10)
  - (a) If a defendant is convicted and sentenced to death for a capital felony and the defendant waives the defendant's right to an appeal or fails to file a timely notice of appeal:

- (i) the judgment is subject to automatic review by the Supreme Court as to whether there was manifest injustice; and
    - (ii) the sentencing court shall promptly certify the entire record of the defendant's case to the Supreme Court.
  - (b) The Supreme Court shall conduct the automatic review of a defendant's case within 120 days after the day on which the sentencing court certifies the entire record of the defendant's case.
  - (c) Except as provided in Subsection (10)(d), an automatic review is conducted without briefing from any party.
  - (d) If the Supreme Court determines that the conviction should be modified, or the conviction or sentence should be vacated, upon an automatic review:
    - (i) the Supreme Court shall request that the attorney general submit briefing to address the error for which the Supreme Court determined that the conviction should be modified or the conviction or sentence should be vacated; and
    - (ii) the Supreme Court may appoint an amicus curae to submit briefing in place of the defendant.
  - (e) Upon any briefing described in Subsection (10)(d), the Supreme Court may modify the conviction, or affirm or vacate the conviction or sentence, of the defendant.
- (11)
- (a) A reversible error in a sentencing proceeding for a capital felony does not result in the reversal of the conviction for the capital felony.
  - (b) If the Supreme Court remands a capital felony case for a new sentencing proceeding, all exhibits and a transcript of all testimony and other evidence that was properly admitted in the prior trial and sentencing proceeding are admissible in the new sentencing proceeding.
- (12)
- (a) An automatic review described in Subsection (10) has priority over all other cases before the Supreme Court.
  - (b) An appeal or petition for extraordinary relief in a capital felony case has priority over all noncapital felony cases before the Supreme Court and should be expedited.
  - (c) A petition for postconviction relief in a capital case has priority over all other cases in the district court, except for a trial of a capital felony case, and should be expedited.
- (13) On a remand for a new sentencing proceeding, the new sentencing proceeding is conducted before:
- (a) except as provided in Subsection (13)(b) or (c), a new jury if:
    - (i) the prior sentencing proceeding was conducted before a jury; or
    - (ii) the prior sentencing proceeding was conducted before the court and the original trial judge is unable or unavailable to conduct the new sentencing proceeding;
  - (b) the original trial judge if:
    - (i) the defendant waives the new sentencing proceeding being conducted before a jury, with the approval of the court and the consent of the prosecution; and
    - (ii) the prior sentencing proceeding was conducted before the court; or
  - (c) a new trial judge if:
    - (i) the defendant waives the new sentencing proceeding being conducted before a jury, with the approval of the court and the consent of the prosecution; and
    - (ii) the original trial judge is unable or unavailable to conduct the new sentencing proceeding.
- (14) If the sentence of death is held to be unconstitutional by the Utah Supreme Court or the United States Supreme Court, the court having jurisdiction over a defendant previously sentenced to death for a capital felony shall:
- (a) cause the defendant to be brought before the court; and

- (b) sentence the defendant to life in prison without parole.
- (15)
- (a) If the appellate court's final decision regarding any appeal of a sentence of death precludes the imposition of the sentence of death due to an intellectual disability as described in Section 77-15a-101.5, the court having jurisdiction over a defendant previously sentenced to death for a capital felony shall:
    - (i) cause the defendant to be brought before the court; and
    - (ii) sentence the defendant to life in prison without parole.
  - (b) If the appellate court precludes the imposition of the sentence of death under Subsection (15)(a), but the appellate court finds that sentencing the defendant to life in prison without parole is likely to result in a manifest injustice, the appellate court may remand the case to the sentencing court for a sentencing proceeding to determine if the defendant should serve a sentence of life in prison without parole or an indeterminate prison term of not less than 25 years and which may be for life.

Amended by Chapter 345, 2026 General Session