

1 from an appellate court, the sentencing authority shall be determined as provided in Subsection
2 [~~(4)~~] (5).

- 3 (2) (a) In capital sentencing proceedings, evidence may be presented on:
4 (i) the nature and circumstances of the crime;
5 (ii) the defendant's character, background, history, mental and physical condition;
6 (iii) the victim and the impact of the crime on the victim's family and community without
7 comparison to other persons or victims; and
8 (iv) any other facts in aggravation or mitigation of the penalty that the court considers
9 relevant to the sentence.

10 (b) Any evidence the court considers to have probative force may be received regardless
11 of its admissibility under the exclusionary rules of evidence. The state's attorney and the defendant
12 shall be permitted to present argument for or against the sentence of death.

13 (3) Aggravating circumstances [~~shall~~] include those outlined in Section 76-5-202.
14 Mitigating circumstances [~~shall~~] include:

- 15 (a) the defendant has no significant history of prior criminal activity;
16 (b) the homicide was committed while the defendant was under the influence of mental
17 or emotional disturbance;
18 (c) the defendant acted under duress or under the domination of another person;
19 (d) at the time of the homicide, the capacity of the defendant to appreciate the
20 wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired as
21 a result of mental disease, intoxication, or influence of drugs;
22 (e) the youth of the defendant at the time of the crime;
23 (f) the defendant was an accomplice in the homicide committed by another person and the
24 defendant's participation was relatively minor; and
25 (g) any other fact in mitigation of the penalty.

26 (4) (a) The court or jury, as the case may be, shall retire to consider the penalty. Except
27 as provided in Subsection 76-3-207.5(2), in all proceedings before a jury, under this section, it
28 shall be instructed as to the punishment to be imposed upon a unanimous decision for death and
29 that the penalty of either life in prison or life in prison without parole, shall be imposed if a
30 unanimous decision for death is not found.

31 (b) The death penalty shall only be imposed if, after considering the totality of the

1 aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that
2 total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable doubt,
3 that the imposition of the death penalty is justified and appropriate in the circumstances. If the
4 jury reports unanimous agreement to impose the sentence of death, the court shall discharge the
5 jury and shall impose the sentence of death.

6 (c) If the jury is unable to reach a unanimous decision imposing the sentence of death,
7 except as provided in Subsection 76-3-207.5(2), the jury shall then determine whether the penalty
8 of life in prison without parole shall be imposed. The penalty of life in prison without parole shall
9 only be imposed if the jury determines that the sentence of life in prison without parole is
10 appropriate. If the jury reports agreement by ten jurors or more to impose the sentence of life in
11 prison without parole, the court shall discharge the jury and shall impose the sentence of life in
12 prison without parole. If ten jurors or more do not agree upon a sentence of life in prison without
13 parole, the court shall discharge the jury and impose the sentence of life imprisonment with the
14 possibility of parole.

15 (d) If the defendant waives hearing before the jury as to sentencing, with the approval of
16 the court and the consent of the prosecution, the court shall determine the appropriate penalty
17 according to the standards of this subsection.

18 (5) Upon any appeal by the defendant where the sentence is of death, the appellate court,
19 if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of death
20 and remand the case to the trial court for new sentencing proceedings to the extent necessary to
21 correct the error or errors. No error in the sentencing proceedings shall result in the reversal of the
22 conviction of a capital felony. In cases of remand for new sentencing proceedings, all exhibits and
23 a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing
24 proceedings shall be admissible in the new sentencing proceedings, and if the sentencing
25 proceeding was before a:

26 (a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the
27 defendant waives the hearing before the jury with the approval of the court and the consent of the
28 prosecution, in which case the proceeding shall be held according to Subsection (5)(b) or (c), as
29 applicable;

30 (b) judge, the original trial judge shall conduct the new sentencing proceeding; or

31 (c) judge, and the original trial judge is unable or unavailable to conduct a new sentencing

1 proceeding, then another judge shall be designated to conduct the new sentencing proceeding, and
2 the new proceeding will be before a jury unless the defendant waives the hearing before the jury
3 with the approval of the court and the consent of the prosecution.

4 (6) In the event the death penalty is held to be unconstitutional by the Utah Supreme Court
5 or the United States Supreme Court, the court having jurisdiction over a person previously
6 sentenced to death for a capital felony shall cause the person to be brought before the court, and
7 the court shall sentence the person to life in prison, if the death penalty is held unconstitutional
8 prior to April 27, 1992, or life in prison without parole if the death penalty is held unconstitutional
9 on or after April 27, 1992, and any person who is thereafter convicted of a capital felony shall be
10 sentenced to life in prison or life in prison without parole.

Legislative Review Note
as of 1-21-98 7:47 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel