

28 from an appellate court, the sentencing authority shall be determined as provided in Subsection
 29 [~~5~~] (6).

30 (2) (a) In capital sentencing proceedings, evidence may be presented on:

31 (i) the nature and circumstances of the crime;

32 (ii) the defendant's character, background, history, mental and physical condition;

33 (iii) the victim and the impact of the crime on the victim's family and community without
 34 comparison to other persons or victims; and

35 (iv) any other facts in aggravation or mitigation of the penalty that the court considers
 36 relevant to the sentence.

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

40 (3) Aggravating circumstances include those outlined in Section 76-5-202.

41 (4) Mitigating circumstances include:

42 (a) the defendant has no significant history of prior criminal activity;

43 (b) the homicide was committed while the defendant was under the influence of mental
 44 or emotional disturbance;

45 (c) the defendant acted under duress or under the domination of another person;

46 (d) (i) at the time of the homicide, the capacity of the defendant to appreciate the
 47 wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired as
 48 a result of mental [~~disease~~] illness or mental retardation, intoxication, or influence of drugs; and

49 (ii) as used in Subsection (4)(d)(i) h [s] :

49a **(A) "MENTAL ILLNESS" HAS THE SAME DEFINITION AS IN SECTION 76-2-305; AND**

49b **(B) h** "mental retardation" means a significant subaverage

50 general intellectual functioning, existing concurrently with deficits in adaptive behavior;

51 (e) the youth of the defendant at the time of the crime;

52 (f) the defendant was an accomplice in the homicide committed by another person and the
 53 defendant's participation was relatively minor; and

54 (g) any other fact in mitigation of the penalty.

55 [~~4~~] (5) (a) The court or jury, as the case may be, shall retire to consider the penalty.

56 Except as provided in Subsection 76-3-207.5(2), in all proceedings before a jury, under this
 57 section, it shall be instructed as to the punishment to be imposed upon a unanimous decision for
 58 death and that the penalty of either an indeterminate prison term of not less than 20 years and

59 which may be for life or life in prison without parole, shall be imposed if a unanimous decision
60 for death is not found.

61 (b) The death penalty shall only be imposed if, after considering the totality of the
62 aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that
63 total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable doubt,
64 that the imposition of the death penalty is justified and appropriate in the circumstances. If the jury
65 reports unanimous agreement to impose the sentence of death, the court shall discharge the jury
66 and shall impose the sentence of death.

67 (c) If the jury is unable to reach a unanimous decision imposing the sentence of death or
68 the state is not seeking the death penalty, the jury shall then determine whether the penalty of life
69 in prison without parole shall be imposed, except as provided in Subsection 76-3-207.5(2). The
70 penalty of life in prison without parole shall only be imposed if the jury determines that the
71 sentence of life in prison without parole is appropriate. If the jury reports agreement by ten jurors
72 or more to impose the sentence of life in prison without parole, the court shall discharge the jury
73 and shall impose the sentence of life in prison without parole. If ten jurors or more do not agree
74 upon a sentence of life in prison without parole, the court shall discharge the jury and impose an
75 indeterminate prison term of not less than 20 years and which may be for life.

76 (d) If the defendant waives hearing before the jury as to sentencing, with the approval of
77 the court and the consent of the prosecution, the court shall determine the appropriate penalty
78 according to the standards of ~~[this Subsection (4)(d)]~~ Subsections (5)(b) and (c).

79 ~~[(5)]~~ (6) Upon any appeal by the defendant where the sentence is of death, the appellate
80 court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of
81 death and remand the case to the trial court for new sentencing proceedings to the extent necessary
82 to correct the error or errors. No error in the sentencing proceedings shall result in the reversal of
83 the conviction of a capital felony. In cases of remand for new sentencing proceedings, all exhibits
84 and a transcript of all testimony and other evidence properly admitted in the prior trial and
85 sentencing proceedings shall be admissible in the new sentencing proceedings, and if the
86 sentencing proceeding was before a:

87 (a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the
88 defendant waives the hearing before the jury with the approval of the court and the consent of the
89 prosecution, in which case the proceeding shall be held according to Subsection ~~[(5)]~~ (6)(b) or (c),

90 as applicable;

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

92 (c) judge, and the original trial judge is unable or unavailable to conduct a new sentencing
93 proceeding, then another judge shall be designated to conduct the new sentencing proceeding, and
94 the new proceeding will be before a jury unless the defendant waives the hearing before the jury
95 with the approval of the court and the consent of the prosecution.

96 [~~6~~] (7) In the event the death penalty is held to be unconstitutional by the Utah Supreme
97 Court or the United States Supreme Court, the court having jurisdiction over a person previously
98 sentenced to death for a capital felony shall cause the person to be brought before the court, and
99 the court shall sentence the person to an indeterminate prison term of not less than 20 years and
100 which may be for life, if the death penalty is held unconstitutional prior to April 27, 1992, or life
101 in prison without parole if the death penalty is held unconstitutional on or after April 27, 1992, and
102 any person who is thereafter convicted of a capital felony shall be sentenced to an indeterminate
103 prison term of not less than 20 years and which may be for life or life in prison without parole.

Legislative Review Note
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A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel