



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), "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.

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**Legislative Review Note**  
**as of 11-29-01 1:16 PM**

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

**Office of Legislative Research and General Counsel**