

2020 South Dakota Legislature  
**Senate Bill 64**

**AMENDMENT 64B FOR THE INTRODUCED BILL**

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

1 **An Act to prohibit capital punishment for any person suffering from a severe mental**  
2 **illness.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1.** That § 23A-27A-3 be AMENDED:

5 **23A-27A-3. Jury to determine existence of mitigating or aggravating**  
6 **circumstances--Instructions to jury.**

7 Upon the conclusion of the evidence, the judge shall give the jury appropriate  
8 instructions. After arguments of counsel, the jury shall retire to determine whether any  
9 ~~mitigating or aggravating~~ circumstances, as defined in § 23A-27A-1, exist and, if so,  
10 whether sufficient circumstances exist to mitigate against imposition of a death sentence.

11 Mitigating circumstances include:

- 12 (1) The defendant has no significant history of prior criminal conduct;  
13 (2) The defendant was afflicted with a mental disability or mental illness;  
14 (3) The defendant was under the influence of mental or emotional disturbance;  
15 (4) The defendant's inability to appreciate the criminality of their conduct or if the  
16 defendant's ability to conform their conduct to the requirements of the law was  
17 substantially impaired;  
18 (5) The defendant's age at the time of the crime;  
19 (6) The defendant acted under duress, though not such duress as to constitute a  
20 defense to prosecution, or acted under the domination of another person;  
21 (7) The victim was a participant in the homicidal conduct or consented to the homicidal  
22 acts;  
23 (8) The defendant's participation in the homicidal conduct was relatively minor; or

1 (9) Any other evidence of a mitigating nature concerning the defendant's character or  
2 record and the circumstances of the offense.

3 The existence of one or more mitigating factors shall be considered together with  
4 all the other facts and circumstances of the case, including aggravating circumstances, in  
5 determining whether to impose a death sentence. The instructions as determined by the  
6 trial judge to be warranted by the evidence shall be given in ~~his~~ the judge's charge and in  
7 writing to the jury for its deliberation.