

On the Introduced bill, delete everything after the enacting clause and insert:

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

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

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

- (1) The defendant has no significant history of prior criminal conduct;
- (2) The defendant was afflicted with a mental disability or mental illness;
- (3) The defendant was under the influence of mental or emotional disturbance;
- (4) The defendant's inability to appreciate the criminality of their conduct or if the defendant's ability to conform their conduct to the requirements of the law was substantially impaired;
- (5) The defendant's age at the time of the crime;
- (6) The defendant acted under duress, though not such duress as to constitute a defense to prosecution, or acted under the domination of another person;
- (7) The victim was a participant in the homicidal conduct or consented to the homicidal acts;
- (8) The defendant's participation in the homicidal conduct was relatively minor; or
- (9) Any other evidence of a mitigating nature concerning the defendant's character or record and the circumstances of the offense.

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

