

On page 1, line 1, of the Introduced bill, delete "prohibit " and insert "define mitigating circumstances from "

On page 1, line 1, after "punishment" delete " for any person suffering from a severe mental illness"

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.—~~The instructions as determined by the trial judge to be warranted by the evidence shall be given in his charge and in writing to the jury for its deliberation.~~ 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) Although the defendant was a principal in the offense which was committed by another, the defendant's participation was relatively minor, although not so minor as to constitute a defense to prosecution;

- (9) The defendant could not reasonably have foreseen that his or her conduct in the course of the commission of the offense for which he or she was convicted would cause, or would create a grave risk of causing, death to another person;
- (10) The emotional state of the defendant at the time the crime was committed;
- (11) The extent of the defendant's cooperation with law enforcement officers or agencies and with the office of the prosecuting attorney;
- (12) The influence of drugs or alcohol;
- (13) The good faith, although mistaken, belief by the defendant that circumstances existed which constituted a moral justification for his or her conduct;
- (14) The defendant is not a continuing threat to society; or
- (15) Any other evidence which bears on the question of mitigation.

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 existence of any mitigating factor may be sufficient reason not to impose a death sentence.

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