

# Adult Statutory Considerations Used to Prosecute Child Torture Offenders

(Current as of March 2009)

\* Note : Text in red are notes and are not part of the statute.

ALABAMA.....	3
ALASKA.....	3
ALASKA STAT. § 11.41.110 (2009). Murder in the second degree.....	3
ALASKA STAT. § 12.55.125 (2009). Sentence of imprisonment for felonies .....	4
ARIZONA.....	11
ARKANSAS .....	11
ARK. CODE ANN. § 5-4-604 (2008). Aggravating circumstances .....	11
CALIFORNIA.....	12
CAL. PENAL CODE § 189 (2009). Degrees of Murder.....	12
CAL. PENAL CODE § 190.2 (2009). Penalty on Finding of Special Circumstance .....	13
CAL. PENAL CODE § 206 (2009). Torture .....	16
COLORADO.....	16
CONNECTICUT.....	17
DELAWARE.....	17
DISTRICT OF COLUMBIA .....	17
FLORIDA.....	17
GEORGIA.....	17
HAWAII.....	17
IDAHO.....	17
ILLINOIS .....	18
INDIANA.....	18
IND. CODE ANN. § 35-50-2-9 (2009). Death Sentences. ....	18
IOWA.....	23
IOWA CODE § 710.2 (2008). Kidnapping in the first degree. ....	23
KANSAS.....	23
KENTUCKY .....	23
LOUISIANA .....	23
LA. REV. STAT. ANN. § 905.4 (2008). Aggravating Circumstances.....	23
MAINE.....	25
Murder accompanied by torture is defined as an aggravating factor through case law. Maine v. Shortsleeves, 580 A.2d 145 (Me. 1990). ....	25
MARYLAND.....	25
MASSACHUSETTS .....	25
MASS. ANN. LAWS ch. 279 § 69 (2009). Determination of sentence; aggravating and mitigating circumstances.....	25
MICHIGAN.....	27
MICH. COMP. LAWS SERV. § 750.85 (2009). Torture; felony; penalty; definitions; element of crime; other laws.....	27
MINNESOTA .....	28
MINN. STAT. § 609.3455 (2008). Dangerous sex offenders; life sentences; conditional release. ....	28
MISSISSIPPI.....	33
MISSOURI.....	33
MO. REV. STAT. § 565.032 (2009). Evidence to be considered in assessing punishment in first degree murder cases for which death penalty authorized.....	33
MONTANA.....	36
NEBRASKA .....	36
NEB. REV. STAT. ANN. § 29-2523 (2009). Aggravating and mitigating circumstances, defined. ....	36

NEVADA .....	37
NEV. REV. STAT. ANN. § 200.030 (2009). Degrees of murder; penalties.....	37
NEV. REV. STAT. ANN. § 200.033 (2009). Circumstances aggravating first degree murder.....	39
NEW HAMPSHIRE .....	41
NEW JERSEY .....	41
N.J. STAT. ANN. § 2C:11-3 (2009). Murder.....	41
NEW MEXICO .....	44
NEW YORK.....	44
N.Y. PENAL LAW § 125.25 (2009). Murder in the second degree.....	44
N.Y. PENAL LAW § 125.27 (2009). Murder in the first degree.....	45
NORTH CAROLINA.....	48
N.C. GEN. STAT. § 14-17 (2009). Murder in the first and second degree defined; punishment.....	48
NORTH DAKOTA.....	48
OHIO.....	48
OKLAHOMA.....	48
OREGON .....	49
OR. REV. STAT. § 163.115 (2007). Murder; affirmative defense to certain felony murders; sentence of life imprisonment required; minimum term.....	49
OR. REV. STAT. § 163.125 (2007). Manslaughter in the second degree.....	51
PENNSYLVANIA .....	52
42 PA. CONS. STAT. ANN. § 9711 (2008). Sentencing procedure for murder of the first degree.....	52
RHODE ISLAND.....	58
R.I. GEN. LAWS § 11-23-2 (2009). Penalties for murder.....	58
SOUTH CAROLINA .....	58
S.C. CODE ANN. § 16-3-20 (2007). Punishment for murder: separate sentencing proceeding to determine whether sentence should be death or life imprisonment.....	58
SOUTH DAKOTA.....	62
TENNESSEE.....	63
TENN. CODE ANN. § 39-13-204 (2009). Sentencing for first degree murder.....	63
TEXAS .....	68
UTAH.....	68
UTAH CODE ANN. § 76-5-202 (2008). Aggravated Murder.....	68
VERMONT .....	72
VIRGINIA.....	73
VA. CODE ANN. § 19.2-264.2 (2009). Conditions for imposition of death sentence.....	73
WASHINGTON.....	73
WEST VIRGINIA .....	73
WISCONSIN.....	73
WYOMING.....	73
WYO. STAT. ANN. § 6-2-101 (2008). Murder in the first degree; penalty .....	73
WYO. STAT. ANN. § 6-2-102 (2008). Presentence hearing for murder in the first degree; mitigating and aggravating circumstances; effect of error in hearing.....	74
WYO. STAT. ANN. § 6-2-104 (2008). Definitions.....	77
U.S. TERRITORIES.....	80
AMERICAN SAMOA.....	80
GUAM.....	80
PUERTO RICO.....	81
P.R. LAWS ANN. tit. 33, § 4002 (2006). Degrees of Murder.....	81
U.S. VIRGIN ISLANDS.....	81
V.I. CODE ANN. tit. 14, § 922 (2009). First and Second Degree Murder Defined .....	81

## ALABAMA

## ALASKA

### *ALASKA STAT. § 11.41.110 (2009). Murder in the second degree*

(a) A person commits the crime of murder in the second degree if

(1) with intent to cause serious physical injury to another person or knowing that the conduct is substantially certain to cause death or serious physical injury to another person, the person causes the death of any person;

(2) the person knowingly engages in conduct that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life;

(3) under circumstances not amounting to murder in the first degree under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree, sexual assault in the second degree, sexual abuse of a minor in the first degree, sexual abuse of a minor in the second degree, burglary in the first degree, escape in the first or second degree, robbery in any degree, or misconduct involving a controlled substance under AS 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of a person other than one of the participants;

(4) acting with a criminal street gang, the person commits or attempts to commit a crime that is a felony and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of a person other than one of the participants; or

(5) the person with criminal negligence causes the death of a child under the age of 16, and the person has been previously convicted of a crime involving a child under the age of 16 that was

(A) a felony violation of AS 11.41;

(B) in violation of a law or ordinance in another jurisdiction with elements similar to a felony under AS 11.41; or

(C) an attempt, a solicitation, or a conspiracy to commit a crime listed in (A) or (B) of this paragraph.

(b) Murder in the second degree is an unclassified felony and is punishable as provided in AS 12.55.

***ALASKA STAT. § 12.55.125 (2009). Sentence of imprisonment for felonies***

(a) A defendant convicted of murder in the first degree or murder of an unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture;

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery; or

(5) the court finds by clear and convincing evidence that the defendant is a peace officer who used the officer's authority as a peace officer to facilitate the murder.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree or murder of an unborn child under

AS 11.41.150(a)(2) -- (4) shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 -- 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 -- 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five to eight years;

(2) if the offense is a first felony conviction

(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(B) and the conviction is for manufacturing related to methamphetamine under AS 11.71.020(a)(2)(A) or (B), seven to 11 years, if

(i) the manufacturing occurred in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of manufacturing or in preparation for manufacturing, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(3) if the offense is a second felony conviction, 10 to 14 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 15 to 20 years.

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall

be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 -- 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, one to three years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a mitigation factor under AS 12.55.155 applies;

(2) if the offense is a first felony conviction,

(A) the defendant violated AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

(B) two to four years if the conviction is for an attempt, solicitation, or conspiracy to manufacture related to methamphetamine under AS 11.31 and AS 11.71.020(a)(2)(A) or (B), and

(i) the attempted manufacturing occurred, or the solicited or conspired offense was to have occurred, in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of an attempt to manufacture, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(3) if the offense is a second felony conviction, four to seven years;

(4) if the offense is a third felony conviction, six to 10 years.

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 -- 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, zero to two years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085, and the court may, as a condition of probation under AS 12.55.086, require the defendant to serve an active term of imprisonment within the range specified in this paragraph;

(2) if the offense is a second felony conviction, two to four years;

(3) if the offense is a third felony conviction, three to five years;

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one to two years.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d), (e), or (i) of this section, except to the extent permitted under AS 12.55.155 -- 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080 below the low end of the presumptive range;

(2) and except as provided in (d)(1) or (e)(1) of this section, imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of

(1) sexual assault in the first degree, sexual abuse of a minor in the first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 -- 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) less than 13 years of age, 25 to 35 years;

(ii) 13 years of age or older, 20 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 35 to 45 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or ( l ) of this section, 40 to 60 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under ( l ) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(2) attempt, conspiracy, or solicitation to commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 -- 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) under 13 years of age, 20 to 30 years;

(ii) 13 years of age or older, 15 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 25 to 35 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 30 to 40 years;

(E) if the offense is a third felony conviction, the offense does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under ( l ) of this section, 35 to 50 years;

(F) if the offense is a third felony conviction, the defendant is not subject to



sentencing under (1) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 -- 12.55.175:

(A) if the offense is a first felony conviction, five to 15 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, 10 to 25 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 to 30 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 20 to 35 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years;

(4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 -- 12.55.175:

(A) if the offense is a first felony conviction, two to 12 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, eight to 15 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 12 to 20 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 15 to 25 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a)

of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under ( l ) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the definite term. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) *[Repealed, § 32 ch 2 SLA 2005.]*

( l ) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of 99 years when the defendant has been previously convicted of two or more most serious felonies. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section.

(n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i) of this section, the total term, made up of the active term of imprisonment plus any suspended term of imprisonment, must fall within the presumptive range, and the active term of imprisonment may not fall below the lower end of the presumptive range.

(o) Other than for convictions subject to a mandatory 99-year sentence, the court shall impose, in addition to an active term of imprisonment imposed under (i) of this section, a minimum period of (1) suspended imprisonment of five years and a minimum period of probation supervision of 15 years for conviction of an unclassified felony, (2) suspended imprisonment of three years and a minimum period of probation supervision of 10 years for conviction of a class A or class B felony, or (3) suspended imprisonment of two years and a minimum period of probation supervision of five years for conviction of a class C felony. The period of probation is in addition to any sentence received under (i) of this section and may not be suspended or reduced. Upon a defendant's release from confinement in a correctional facility, the defendant is subject to this probation

requirement and shall submit and comply with the terms and requirements of the probation.

## **ARIZONA**

## **ARKANSAS**

### ***ARK. CODE ANN. § 5-4-604 (2008). Aggravating circumstances***

An aggravating circumstance is limited to the following:

- (1) The capital murder was committed by a person imprisoned as a result of a felony conviction;
- (2) The capital murder was committed by a person unlawfully at liberty after being sentenced to imprisonment as a result of a felony conviction;
- (3) The person previously committed another felony, an element of which was the use or threat of violence to another person or the creation of a substantial risk of death or serious physical injury to another person;
- (4) The person in the commission of the capital murder knowingly created a great risk of death to a person other than the victim or caused the death of more than one (1) person in the same criminal episode;
- (5) The capital murder was committed for the purpose of avoiding or preventing an arrest or effecting an escape from custody;
- (6) The capital murder was committed for pecuniary gain;
- (7) The capital murder was committed for the purpose of disrupting or hindering the lawful exercise of any government or political function;
- (8) (A) The capital murder was committed in an especially cruel or depraved manner.  
  
(B) (i) For purposes of subdivision (8)(A) of this section, a capital murder is committed in an especially cruel manner when, as part of a course of conduct intended to inflict mental anguish, serious physical abuse, or torture upon the victim prior to the victim's death, mental anguish, serious physical abuse, or torture is inflicted.  
  
(ii) (a) "Mental anguish" means the victim's uncertainty as to his or her ultimate

fate.

(b) "Serious physical abuse" means physical abuse that creates a substantial risk of death or that causes protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

(c) "Torture" means the infliction of extreme physical pain for a prolonged period of time prior to the victim's death.

(C) For purposes of subdivision (8)(A) of this section, a capital murder is committed in an especially depraved manner when the person relishes the murder, evidencing debasement or perversion, or shows an indifference to the suffering of the victim and evidences a sense of pleasure in committing the murder;

(9) The capital murder was committed by means of a destructive device, bomb, explosive, or similar device that the person planted, hid, or concealed in any place, area, dwelling, building, or structure, or mailed or delivered, or caused to be planted, hidden, concealed, mailed, or delivered, and the person knew that his or her act would create a great risk of death to human life; or

(10) The capital murder was committed against a person whom the defendant knew or reasonably should have known was especially vulnerable to the attack because:

(A) Of either a temporary or permanent severe physical or mental disability which would interfere with the victim's ability to flee or to defend himself or herself; or

(B) The person was twelve (12) years of age or younger.

## **CALIFORNIA**

### ***CAL. PENAL CODE § 189 (2009). Degrees of Murder***

All murder which is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree. All other kinds of murders are of the second degree.

As used in this section, "destructive device" means any destructive device as defined in Section 12301, and "explosive" means any explosive as defined in Section 12000 of the Health and Safety Code.

As used in this section, "weapon of mass destruction" means any item defined in Section 11417.

To prove the killing was "deliberate and premeditated," it shall not be necessary to prove the defendant maturely and meaningfully reflected upon the gravity of his or her act.

***CAL. PENAL CODE § 190.2 (2009). Penalty on Finding of Special Circumstance***

(a) The penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of the following special circumstances has been found under Section 190.4 to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was convicted previously of murder in the first or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.

(3) The defendant, in this proceeding, has been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest, or perfecting or attempting to perfect, an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim

was a peace officer, as defined in the above-enumerated sections, or a former peace officer under any of those sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in Section 245.1, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this or any other state, or of a federal prosecutor's office, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, or of any local or state government of this or any other state, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this section, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime that is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim by means of lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion,

nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

(A) Robbery in violation of Section 211 or 212.5.

(B) Kidnapping in violation of Section 207, 209, or 209.5.

(C) Rape in violation of Section 261.

(D) Sodomy in violation of Section 286.

(E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.

(F) Oral copulation in violation of Section 288a.

(G) Burglary in the first or second degree in violation of Section 460.

(H) Arson in violation of subdivision (b) of Section 451.

(I) Train wrecking in violation of Section 219.

(J) Mayhem in violation of Section 203.

(K) Rape by instrument in violation of Section 289.

(L) Carjacking, as defined in Section 215.

(M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder.

(18) The murder was intentional and involved the infliction of torture.

(19) The defendant intentionally killed the victim by the administration of poison.

(20) The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(21) The murder was intentional and perpetrated by means of discharging a firearm from

a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, "motor vehicle" means any vehicle as defined in Section 415 of the Vehicle Code.

(22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in subdivision (f) of Section 186.22, and the murder was carried out to further the activities of the criminal street gang.

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom the special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in the state prison for life without the possibility of parole.

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall be punished by death or imprisonment in the state prison for life without the possibility of parole if one or more of the special circumstances enumerated in subdivision (a) has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a) which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall be punished by death or imprisonment in the state prison for life without the possibility of parole if a special circumstance enumerated in paragraph (17) of subdivision (a) has been found to be true under Section 190.4.

The penalty shall be determined as provided in this section and Sections 190.1, 190.3, 190.4, and 190.5.

***CAL. PENAL CODE § 206 (2009). Torture***

Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 12022.7 upon the person of another, is guilty of torture.

The crime of torture does not require any proof that the victim suffered pain.

## **COLORADO**



**CONNECTICUT**

**DELAWARE**

**DISTRICT OF COLUMBIA**

**FLORIDA**

**GEORGIA**

**HAWAII**

**IDAHO**

## **ILLINOIS**

## **INDIANA**

### ***IND. CODE ANN. § 35-50-2-9 (2009). Death Sentences.***

The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with mental retardation.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

(A) Arson (IC 35-43-1-1).

(B) Burglary (IC 35-43-2-1).

(C) Child molesting (IC 35-42-4-3).

(D) Criminal deviate conduct (IC 35-42-4-2).

(E) Kidnapping (IC 35-42-3-2).

(F) Rape (IC 35-42-4-1).

(G) Robbery (IC 35-42-5-1).

(H) Carjacking (IC 35-42-5-2).

(I) Criminal gang activity (IC 35-45-9-3).

(J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) The defendant committed the murder by the unlawful detonation of an explosive

with intent to injure person or damage property.

(3) The defendant committed the murder by lying in wait.

(4) The defendant who committed the murder was hired to kill.

(5) The defendant committed the murder by hiring another person to kill.

(6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:

(A) the victim was acting in the course of duty; or

(B) the murder was motivated by an act the victim performed while acting in the course of duty.

(7) The defendant has been convicted of another murder.

(8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.

(9) The defendant was:

(A) under the custody of the department of correction;

(B) under the custody of a county sheriff;

(C) on probation after receiving a sentence for the commission of a felony; or

(D) on parole;

at the time the murder was committed.

(10) The defendant dismembered the victim.

(11) The defendant burned, mutilated, or tortured the victim while the victim was alive.

(12) The victim of the murder was less than twelve (12) years of age.

(13) The victim was a victim of any of the following offenses for which the defendant was convicted:

(A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.

(B) Kidnapping (IC 35-42-3-2).

(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court

may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (1) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

- (1) the death penalty; or
- (2) life imprisonment without parole;

only if it makes the findings described in subsection (1). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

- (1) sentence the defendant to death; or
- (2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (1).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the

execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction

and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

(l) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

(1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and

(2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

## **IOWA**

### ***IOWA CODE § 710.2 (2008). Kidnapping in the first degree.***

Kidnapping is kidnapping in the first degree when the person kidnapped, as a consequence of the kidnapping, suffers serious injury, or is intentionally subjected to torture or sexual abuse.

Kidnapping in the first degree is a class "A" felony.

## **KANSAS**

## **KENTUCKY**

## **LOUISIANA**

### ***LA. REV. STAT. ANN. § 905.4 (2008). Aggravating Circumstances.***

A. The following shall be considered aggravating circumstances:

(1) The offender was engaged in the perpetration or attempted perpetration of aggravated rape, forcible rape, aggravated kidnapping, second degree kidnapping, aggravated burglary, aggravated arson, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, second degree robbery, simple robbery, cruelty to

juveniles, second degree cruelty to juveniles, or terrorism.

(2) The victim was a fireman or peace officer engaged in his lawful duties.

(3) The offender has been previously convicted of an unrelated murder, aggravated rape, aggravated burglary, aggravated arson, aggravated escape, armed robbery, or aggravated kidnapping.

(4) The offender knowingly created a risk of death or great bodily harm to more than one person.

(5) The offender offered or has been offered or has given or received anything of value for the commission of the offense.

(6) The offender at the time of the commission of the offense was imprisoned after sentence for the commission of an unrelated forcible felony.

(7) The offense was committed in an especially heinous, atrocious or cruel manner.

(8) The victim was a witness in a prosecution against the defendant, gave material assistance to the state in any investigation or prosecution of the defendant, or was an eye witness to a crime alleged to have been committed by the defendant or possessed other material evidence against the defendant.

(9) The victim was a correctional officer or any employee of the Department of Public Safety and Corrections who, in the normal course of his employment was required to come in close contact with persons incarcerated in a state prison facility, and the victim was engaged in his lawful duties at the time of the offense.

(10) The victim was under the age of twelve years or sixty-five years of age or older.

(11) The offender was engaged in the distribution, exchange, sale, or purchase, or any attempt thereof, of a controlled dangerous substance listed in Schedule I, II, III, IV, or V of the Uniform Controlled Dangerous Substances Law.

(12) The offender was engaged in the activities prohibited by R.S. 14:107.1(C)(1).

B. For the purposes of Paragraph A(2) herein, the term "peace officer" is defined to include any constable, marshal, deputy marshal, sheriff, deputy sheriff, local or state policeman, commissioned wildlife enforcement agent, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, attorney general, assistant attorney general, attorney general's investigator, district attorney, assistant district attorney, or district attorney's investigator.



## **MAINE**

*Murder accompanied by torture is defined as an aggravating factor through case law. Maine v. Shortsleeves, 580 A.2d 145 (Me. 1990).*

## **MARYLAND**

## **MASSACHUSETTS**

*MASS. ANN. LAWS ch. 279 § 69 (2009). Determination of sentence; aggravating and mitigating circumstances.*

(a) In all cases in which the death penalty may be authorized, the statutory aggravating circumstances are:

(1) the murder was committed on a victim who was killed while serving in the performance of his official duties as one or more of the following: police officer, special police officer, state or federal law enforcement officer, firefighter, officer or employee of the department of correction, officer or employee of a sheriff's department, officer or employee of a jail or officer or employee of a house of correction;

(2) the murder was committed by a defendant who was at the time incarcerated in a jail, house of correction, prison, state prison or a correctional or penal institution or a facility used for the housing or treatment or housing and treatment of prisoners;

(3) the murder was committed on a victim who was killed while engaged in the performance of his official duties as a judge, prosecuting attorney, juror, or witness;

(4) the murder was committed by a defendant who had previously been convicted of murder in the first degree, or of an offense in any other federal, state or territorial jurisdiction of the United States which is the same as or necessarily includes the elements of the offense of murder in the first degree;

(5) the murder was committed by the defendant pursuant to a contract, agreement or understanding by which he was to receive money or anything of value in return for committing the murder;

(6) the murder was committed by the defendant for the purpose of avoiding, interfering with, or preventing a lawful arrest of the defendant or another, or the murder was committed by the defendant for the purpose of effectuating an escape or attempting to effectuate an escape of the defendant or another from custody in a place of lawful confinement;

(7) the murder involved torture to the victim or the intentional infliction of extreme pain prior to death demonstrating a total disregard to the suffering of the victim;

(8) the murder was committed as part of a course of conduct involving the killing of or causing serious bodily injury to or the attempted killing of or the attempted causing of serious bodily injury to more than one person by the defendant;

(9) the murder was committed by means of a destructive device, bomb, or explosive planted, hidden, mailed, delivered, or concealed in any place, area, dwelling, building, or structure by the defendant or the murder was committed by means such that the defendant knew or reasonably should have known that his act or acts would create a grave risk of death or serious bodily injury to more than one person; or

(10) the murder was committed by the defendant and occurred during the commission or attempted commission or flight after committing or flight after attempting to commit aggravated rape, rape, rape of a child, indecent assault and battery on a child under fourteen, assault with intent to rape, assault on a child under sixteen years of age with intent to rape, kidnapping for ransom, kidnapping, armed robbery, unarmed robbery, breaking and entering with intent to commit a felony, armed assault in a dwelling, arson, confining or putting in fear or otherwise harming another for the purpose of stealing from depositories, or the murder occurred while the defendant was in possession of a sawed-off shotgun or a machine gun.

(b) In all cases in which the death penalty may be authorized, the mitigating circumstances shall be any factors proffered by the defendant or the commonwealth which are relevant in determining whether to impose a sentence less than death, including, but not limited to, any aspect of the defendant's character, propensities, or record and any of the circumstances of the murder, including but not limited to the following:

(1) the defendant has no significant history of prior criminal convictions;

(2) the victim was a participant in the defendant's conduct or had consented to it;

(3) the murder was committed while the defendant was under extreme duress or under the domination or control of another;

(4) the offense was committed while the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was

impaired as a result of a mental disease or defect, organic brain damage, emotional illness brought on by stress or prescribed medication, intoxication, or legal or illegal drug use by the defendant which was insufficient to establish a defense to the murder but which substantially affected his judgment;

(5) the defendant was over the age of seventy-five at the time of the murder, or any other relevant consideration regarding the age of the defendant at the time of the murder;

(6) the defendant was battered or otherwise physically, sexually, or mentally abused by the victim in connection with or immediately prior to the murder for which the defendant was convicted;

(7) the defendant was experiencing post-traumatic stress syndrome caused by military service during a declared or undeclared war.

## **MICHIGAN**

### ***MICH. COMP. LAWS SERV. § 750.85 (2009). Torture; felony; penalty; definitions; element of crime; other laws***

(1) A person who, with the intent to cause cruel or extreme physical or mental pain and suffering, inflicts great bodily injury or severe mental pain or suffering upon another person within his or her custody or physical control commits torture and is guilty of a felony punishable by imprisonment for life or any term of years.

(2) As used in this section:

(a) "Cruel" means brutal, inhuman, sadistic, or that which torments.

(b) "Custody or physical control" means the forcible restriction of a person's movements or forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority.

(c) "Great bodily injury" means either of the following:

(i) Serious impairment of a body function as that term is defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(ii) One or more of the following conditions: internal injury, poisoning, serious burns or scalding, severe cuts, or multiple puncture wounds.

(d) "Severe mental pain or suffering" means a mental injury that results in a substantial alteration of mental functioning that is manifested in a visibly demonstrable manner caused by or resulting from any of the following:

(i) The intentional infliction or threatened infliction of great bodily injury.

(ii) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt the senses or the personality.

(iii) The threat of imminent death.

(iv) The threat that another person will imminently be subjected to death, great bodily injury, or the administration or application of mind-altering substances or other

procedures calculated to disrupt the senses or personality.

(3) Proof that a victim suffered pain is not an element of the crime under this section.

(4) A conviction or sentence under this section does not preclude a conviction or sentence for a violation of any other law of this state arising from the same transaction.

## MINNESOTA

### ***MINN. STAT. § 609.3455 (2008). Dangerous sex offenders; life sentences; conditional release.***

Subdivision 1. Definitions.

(a) As used in this section, the following terms have the meanings given.

(b) "Conviction" includes a conviction as an extended jurisdiction juvenile under section 260B.130 for a violation of, or an attempt to violate, section 609.342, 609.343, 609.344, or 609.3453, if the adult sentence has been executed.

(c) "Extreme inhumane conditions" mean situations where, either before or after the sexual penetration or sexual contact, the offender knowingly causes or permits the complainant to be placed in a situation likely to cause the complainant severe ongoing mental, emotional, or psychological harm, or causes the complainant's death.

(d) A "heinous element" includes:

(1) the offender tortured the complainant;

(2) the offender intentionally inflicted great bodily harm upon the complainant;

(3) the offender intentionally mutilated the complainant;

(4) the offender exposed the complainant to extreme inhumane conditions;

(5) the offender was armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the complainant to submit;

(6) the offense involved sexual penetration or sexual contact with more than one victim;

(7) the offense involved more than one perpetrator engaging in sexual penetration or sexual contact with the complainant; or

(8) the offender, without the complainant's consent, removed the complainant from one

place to another and did not release the complainant in a safe place.

(e) "Mutilation" means the intentional infliction of physical abuse designed to cause serious permanent disfigurement or permanent or protracted loss or impairment of the functions of any bodily member or organ, where the offender relishes the infliction of the abuse, evidencing debasement or perversion.

(f) A conviction is considered a "previous sex offense conviction" if the offender was convicted and sentenced for a sex offense before the commission of the present offense.

(g) A conviction is considered a "prior sex offense conviction" if the offender was convicted of committing a sex offense before the offender has been convicted of the present offense, regardless of whether the offender was convicted for the first offense before the commission of the present offense, and the convictions involved separate behavioral incidents.

(h) "Sex offense" means any violation of, or attempt to violate, section 609.342, 609.343, 609.344, 609.345, 609.3451, 609.3453, or any similar statute of the United States, this state, or any other state.

(i) "Torture" means the intentional infliction of extreme mental anguish, or extreme psychological or physical abuse, when committed in an especially depraved manner.

(j) An offender has "two previous sex offense convictions" only if the offender was convicted and sentenced for a sex offense committed after the offender was earlier convicted and sentenced for a sex offense and both convictions preceded the commission of the present offense of conviction.

Subd. 2. Mandatory life sentence without release; egregious first-time and repeat offenders.

(a) Notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person convicted under section 609.342, subdivision 1, paragraph (c), (d), (e), (f), or (h); or 609.343, subdivision 1, paragraph (c), (d), (e), (f), or (h), to life without the possibility of release if:

(1) the fact finder determines that two or more heinous elements exist; or

(2) the person has a previous sex offense conviction for a violation of section 609.342, 609.343, or 609.344, and the fact finder determines that a heinous element exists for the present offense.

(b) A fact finder may not consider a heinous element if it is an element of the underlying specified violation of section 609.342 or 609.343. In addition, when determining whether two or more heinous elements exist, the fact finder may not use the same underlying facts to support a determination that more than one element exists.

Subd. 3. Mandatory life sentence for egregious first-time offenders.

(a) Notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person to imprisonment for life if the person is convicted under section 609.342, subdivision 1, paragraph (c), (d), (e), (f), or (h), or 609.343, subdivision 1, paragraph (c), (d), (e), (f), or (h); and the fact finder determines that a heinous element exists.

(b) The fact finder may not consider a heinous element if it is an element of the underlying specified violation of section 609.342 or 609.343.

Subd. 3a. Mandatory sentence for certain engrained offenders.

(a) A court shall commit a person to the commissioner of corrections for a period of time that is not less than double the presumptive sentence under the sentencing guidelines and not more than the statutory maximum, or if the statutory maximum is less than double the presumptive sentence, for a period of time that is equal to the statutory maximum, if:

(1) the court is imposing an executed sentence on a person convicted of committing or attempting to commit a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453;

(2) the fact finder determines that the offender is a danger to public safety; and

(3) the fact finder determines that the offender's criminal sexual behavior is so engrained that the risk of reoffending is great without intensive psychotherapeutic intervention or other long-term treatment or supervision extending beyond the presumptive term of imprisonment and supervised release.

(b) The fact finder shall base its determination that the offender is a danger to public safety on any of the following factors:

(1) the crime involved an aggravating factor that would justify a durational departure from the presumptive sentence under the sentencing guidelines;

(2) the offender previously committed or attempted to commit a predatory crime or a violation of section 609.224 or 609.2242, including:

(i) an offense committed as a juvenile that would have been a predatory crime or a violation of section 609.224 or 609.2242 if committed by an adult; or

(ii) a violation or attempted violation of a similar law of any other state or the United States; or

(3) the offender planned or prepared for the crime prior to its commission.

(c) As used in this section, "predatory crime" has the meaning given in section 609.341, subdivision 22.

Subd. 4. Mandatory life sentence; repeat offenders.

(a) Notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person to imprisonment for life if the person is convicted of violating section 609.342, 609.343, 609.344, 609.345, or 609.3453 and:

(1) the person has two previous sex offense convictions;

(2) the person has a previous sex offense conviction and:

(i) the fact finder determines that the present offense involved an aggravating factor that would provide grounds for an upward durational departure under the sentencing guidelines other than the aggravating factor applicable to repeat criminal sexual conduct convictions;

(ii) the person received an upward durational departure from the sentencing guidelines for the previous sex offense conviction; or

(iii) the person was sentenced under this section or [Minnesota Statutes 2004, section 609.108](#), for the previous sex offense conviction; or

(3) the person has two prior sex offense convictions, and the fact finder determines that the prior convictions and present offense involved at least three separate victims, and:

(i) the fact finder determines that the present offense involved an aggravating factor that would provide grounds for an upward durational departure under the sentencing guidelines other than the aggravating factor applicable to repeat criminal sexual conduct convictions;

(ii) the person received an upward durational departure from the sentencing guidelines for one of the prior sex offense convictions; or

(iii) the person was sentenced under this section or [Minnesota Statutes 2004, section 609.108](#), for one of the prior sex offense convictions.

(b) Notwithstanding paragraph (a), a court may not sentence a person to imprisonment for life for a violation of section 609.345, unless the person's previous or prior sex offense convictions that are being used as the basis for the sentence are for violations of section 609.342, 609.343, 609.344, or 609.3453, or any similar statute of the United States, this state, or any other state.

Subd. 5. Life sentences; minimum term of imprisonment.

At the time of sentencing under subdivision 3 or 4, the court shall specify a minimum term of imprisonment, based on the sentencing guidelines or any applicable mandatory minimum sentence, that must be served before the offender may be considered for supervised release.

Subd. 6. Mandatory ten-year conditional release term.

Notwithstanding the statutory maximum sentence otherwise applicable to the offense and unless a longer conditional release term is required in subdivision 7, when a court commits an offender to the custody of the commissioner of corrections for a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453, the court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release for ten years, minus the time the offender served on supervised release.

Subd. 7. Mandatory lifetime conditional release term.

(a) When a court sentences an offender under subdivision 3 or 4, the court shall provide that, if the offender is released from prison, the commissioner of corrections shall place the offender on conditional release for the remainder of the offender's life.

(b) Notwithstanding the statutory maximum sentence otherwise applicable to the offense, when the court commits an offender to the custody of the commissioner of corrections for a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453, and the offender has a previous or prior sex offense conviction, the court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release for the remainder of the offender's life.

(c) Notwithstanding paragraph (b), an offender may not be placed on lifetime conditional release for a violation of section 609.345, unless the offender's previous or prior sex offense conviction is for a violation of section 609.342, 609.343, 609.344, or 609.3453, or any similar statute of the United States, this state, or any other state.

Subd. 8. Terms of conditional release; applicable to all sex offenders.

(a) The provisions of this subdivision relating to conditional release apply to all sex offenders sentenced to prison for a violation of section 609.342, 609.343, 609.344, 609.345, or 609.3453. Except as provided in this subdivision, conditional release of sex offenders is governed by provisions relating to supervised release. The commissioner of corrections may not dismiss an offender on conditional release from supervision until the offender's conditional release term expires.

(b) The conditions of release may include successful completion of treatment and aftercare in a program approved by the commissioner, satisfaction of the release conditions specified in section 244.05, subdivision 6, and any other conditions the



commissioner considers appropriate. The commissioner shall develop a plan to pay the cost of treatment of a person released under this subdivision. The plan may include co-payments from offenders, third-party payers, local agencies, or other funding sources as they are identified. This section does not require the commissioner to accept or retain an offender in a treatment program. Before the offender is placed on conditional release, the commissioner shall notify the sentencing court and the prosecutor in the jurisdiction where the offender was sentenced of the terms of the offender's conditional release. The commissioner also shall make reasonable efforts to notify the victim of the offender's crime of the terms of the offender's conditional release. If the offender fails to meet any condition of release, the commissioner may revoke the offender's conditional release and order that the offender serve all or a part of the remaining portion of the conditional release term in prison.

Subd. 9. Applicability.

The provisions of this section do not affect the applicability of [Minnesota Statutes 2004, section 609.108](#), to crimes committed before August 1, 2005, or the validity of sentences imposed under [Minnesota Statutes 2004, section 609.108](#).

## MISSISSIPPI

## MISSOURI

***MO. REV. STAT. § 565.032 (2009). Evidence to be considered in assessing punishment in first degree murder cases for which death penalty authorized***

1. In all cases of murder in the first degree for which the death penalty is authorized, the judge in a jury-waived trial shall consider, or he shall include in his instructions to the jury for it to consider:

(1) Whether a statutory aggravating circumstance or circumstances enumerated in subsection 2 of this section is established by the evidence beyond a reasonable doubt; and

(2) If a statutory aggravating circumstance or circumstances is proven beyond a reasonable doubt, whether the evidence as a whole justifies a sentence of death or a sentence of life imprisonment without eligibility for probation, parole, or release except by act of the governor. In determining the issues enumerated in subdivisions (1) and (2) of this subsection, the trier shall consider all evidence which it finds to be in aggravation or mitigation of punishment, including evidence received during the first stage of the trial and evidence supporting any of the statutory aggravating or mitigating circumstances set

out in subsections 2 and 3 of this section. If the trier is a jury, it shall not be instructed upon any specific evidence which may be in aggravation or mitigation of punishment, but shall be instructed that each juror shall consider any evidence which he considers to be aggravating or mitigating.

2. Statutory aggravating circumstances for a murder in the first degree offense shall be limited to the following:

(1) The offense was committed by a person with a prior record of conviction for murder in the first degree, or the offense was committed by a person who has one or more serious assaultive criminal convictions;

(2) The murder in the first degree offense was committed while the offender was engaged in the commission or attempted commission of another unlawful homicide;

(3) The offender by his act of murder in the first degree knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person;

(4) The offender committed the offense of murder in the first degree for himself or another, for the purpose of receiving money or any other thing of monetary value from the victim of the murder or another;

(5) The murder in the first degree was committed against a judicial officer, former judicial officer, prosecuting attorney or former prosecuting attorney, circuit attorney or former circuit attorney, assistant prosecuting attorney or former assistant prosecuting attorney, assistant circuit attorney or former assistant circuit attorney, peace officer or former peace officer, elected official or former elected official during or because of the exercise of his official duty;

(6) The offender caused or directed another to commit murder in the first degree or committed murder in the first degree as an agent or employee of another person;

(7) The murder in the first degree was outrageously or wantonly vile, horrible or inhuman in that it involved torture, or depravity of mind;

(8) The murder in the first degree was committed against any peace officer, or fireman while engaged in the performance of his official duty;

(9) The murder in the first degree was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement;

(10) The murder in the first degree was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another;

(11) The murder in the first degree was committed while the defendant was engaged in the perpetration or was aiding or encouraging another person to perpetrate or attempt to perpetrate a felony of any degree of rape, sodomy, burglary, robbery, kidnapping, or any felony offense in chapter 195, RSMo;

(12) The murdered individual was a witness or potential witness in any past or pending investigation or past or pending prosecution, and was killed as a result of his status as a witness or potential witness;

(13) The murdered individual was an employee of an institution or facility of the department of corrections of this state or local correction agency and was killed in the course of performing his official duties, or the murdered individual was an inmate of such institution or facility;

(14) The murdered individual was killed as a result of the hijacking of an airplane, train, ship, bus or other public conveyance;

(15) The murder was committed for the purpose of concealing or attempting to conceal any felony offense defined in chapter 195, RSMo;

(16) The murder was committed for the purpose of causing or attempting to cause a person to refrain from initiating or aiding in the prosecution of a felony offense defined in chapter 195, RSMo;

(17) The murder was committed during the commission of a crime which is part of a pattern of criminal street gang activity as defined in section 578.421.

3. Statutory mitigating circumstances shall include the following:

(1) The defendant has no significant history of prior criminal activity;

(2) The murder in the first degree was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(3) The victim was a participant in the defendant's conduct or consented to the act;

(4) The defendant was an accomplice in the murder in the first degree committed by another person and his participation was relatively minor;

(5) The defendant acted under extreme duress or under the substantial domination of another person;

(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired;

(7) The age of the defendant at the time of the crime.

## MONTANA

## NEBRASKA

### *NEB. REV. STAT. ANN. § 29-2523 (2009). Aggravating and mitigating circumstances, defined.*

The aggravating and mitigating circumstances referred to in [sections 29-2519](#) to [29-2524](#) shall be as follows:

(1) Aggravating Circumstances:

(a) The offender was previously convicted of another murder or a crime involving the use or threat of violence to the person, or has a substantial prior history of serious assaultive or terrorizing criminal activity;

(b) The murder was committed in an effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of such crime;

(c) The murder was committed for hire, or for pecuniary gain, or the defendant hired another to commit the murder for the defendant;

(d) The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence;

(e) At the time the murder was committed, the offender also committed another murder;

(f) The offender knowingly created a great risk of death to at least several persons;

(g) The victim was a public servant having lawful custody of the offender or another in the lawful performance of his or her official duties and the offender knew or should have known that the victim was a public servant performing his or her official duties;

(h) The murder was committed knowingly to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws; or

(i) The victim was a law enforcement officer engaged in the lawful performance of

his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer.

(2) Mitigating Circumstances:

- (a) The offender has no significant history of prior criminal activity;
- (b) The offender acted under unusual pressures or influences or under the domination of another person;
- (c) The crime was committed while the offender was under the influence of extreme mental or emotional disturbance;
- (d) The age of the defendant at the time of the crime;
- (e) The offender was an accomplice in the crime committed by another person and his or her participation was relatively minor;
- (f) The victim was a participant in the defendant's conduct or consented to the act; or
- (g) At the time of the crime, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication.

## **NEVADA**

### ***NEV. REV. STAT. ANN. § 200.030 (2009). Degrees of murder; penalties.***

1. Murder of the first degree is murder which is:

- (a) Perpetrated by means of poison, lying in wait or torture, or by any other kind of willful, deliberate and premeditated killing;
- (b) Committed in the perpetration or attempted perpetration of sexual assault, kidnapping, arson, robbery, burglary, invasion of the home, sexual abuse of a child, sexual molestation of a child under the age of 14 years, child abuse or abuse of an older person or vulnerable person pursuant to NRS 200.5099;
- (c) Committed to avoid or prevent the lawful arrest of any person by a peace officer or to effect the escape of any person from legal custody;
- (d) Committed on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties by a person who intended to create a great risk of death or substantial bodily harm

to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person; or

(e) Committed in the perpetration or attempted perpetration of an act of terrorism.

2. Murder of the second degree is all other kinds of murder.

3. The jury before whom any person indicted for murder is tried shall, if they find him guilty thereof, designate by their verdict whether he is guilty of murder of the first or second degree.

4. A person convicted of murder of the first degree is guilty of a category A felony and shall be punished:

(a) By death, only if one or more aggravating circumstances are found and any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstance or circumstances, unless a court has made a finding pursuant to NRS 174.098 that the defendant is a person with mental retardation and has stricken the notice of intent to seek the death penalty; or

(b) By imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or

(3) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.

A determination of whether aggravating circumstances exist is not necessary to fix the penalty at imprisonment for life with or without the possibility of parole.

5. A person convicted of murder of the second degree is guilty of a category A felony and shall be punished by imprisonment in the state prison:

(a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(b) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

6. As used in this section:

(a) "Act of terrorism" has the meaning ascribed to it in NRS 202.4415;

(b) "Child abuse" means physical injury of a nonaccidental nature to a child under the age of 18 years;

(c) "School bus" has the meaning ascribed to it in NRS 483.160;

(d) "Sexual abuse of a child" means any of the acts described in NRS 432B.100; and

(e) "Sexual molestation" means any willful and lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of the perpetrator or of the child.

***NEV. REV. STAT. ANN. § 200.033 (2009). Circumstances aggravating first degree murder.***

The only circumstances by which murder of the first degree may be aggravated are:

1. The murder was committed by a person under sentence of imprisonment.

2. The murder was committed by a person who, at any time before a penalty hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of:

(a) Another murder and the provisions of subsection 12 do not otherwise apply to that other murder; or

(b) A felony involving the use or threat of violence to the person of another and the provisions of subsection 4 do not otherwise apply to that felony.

For the purposes of this subsection, a person shall be deemed to have been convicted at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

3. The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device or course of action which would normally be hazardous to the lives of more than one person.

4. The murder was committed while the person was engaged, alone or with others, in the commission of, or an attempt to commit or flight after committing or attempting to commit, any robbery, arson in the first degree, burglary, invasion of the home or kidnapping in the first degree, and the person charged:

(a) Killed or attempted to kill the person murdered; or

(b) Knew or had reason to know that life would be taken or lethal force used.

5. The murder was committed to avoid or prevent a lawful arrest or to effect an escape

from custody.

6. The murder was committed by a person, for himself or another, to receive money or any other thing of monetary value.

7. The murder was committed upon a peace officer or firefighter who was killed while engaged in the performance of his official duty or because of an act performed in his official capacity, and the defendant knew or reasonably should have known that the victim was a peace officer or firefighter. For the purposes of this subsection, "peace officer" means:

(a) An employee of the Department of Corrections who does not exercise general control over offenders imprisoned within the institutions and facilities of the Department, but whose normal duties require him to come into contact with those offenders when carrying out the duties prescribed by the Director of the Department.

(b) Any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive, when carrying out those powers.

8. The murder involved torture or the mutilation of the victim.

9. The murder was committed upon one or more persons at random and without apparent motive.

10. The murder was committed upon a person less than 14 years of age.

11. The murder was committed upon a person because of the actual or perceived race, color, religion, national origin, physical or mental disability or sexual orientation of that person.

12. The defendant has, in the immediate proceeding, been convicted of more than one offense of murder in the first or second degree. For the purposes of this subsection, a person shall be deemed to have been convicted of a murder at the time the jury verdict of guilt is rendered or upon pronouncement of guilt by a judge or judges sitting without a jury.

13. The person, alone or with others, subjected or attempted to subject the victim of the murder to nonconsensual sexual penetration immediately before, during or immediately after the commission of the murder. For the purposes of this subsection:

(a) "Nonconsensual" means against the victim's will or under conditions in which the person knows or reasonably should know that the victim is mentally or physically incapable of resisting, consenting or understanding the nature of his conduct, including, but not limited to, conditions in which the person knows or reasonably should know that the victim is dead.



(b) "Sexual penetration" means cunnilingus, fellatio or any intrusion, however slight, of any part of the victim's body or any object manipulated or inserted by a person, alone or with others, into the genital or anal openings of the body of the victim, whether or not the victim is alive. The term includes, but is not limited to, anal intercourse and sexual intercourse in what would be its ordinary meaning.

14. The murder was committed on the property of a public or private school, at an activity sponsored by a public or private school or on a school bus while the bus was engaged in its official duties by a person who intended to create a great risk of death or substantial bodily harm to more than one person by means of a weapon, device or course of action that would normally be hazardous to the lives of more than one person. For the purposes of this subsection, "school bus" has the meaning ascribed to it in NRS 483.160.

15. The murder was committed with the intent to commit, cause, aid, further or conceal an act of terrorism. For the purposes of this subsection, "act of terrorism" has the meaning ascribed to it in NRS 202.4415.

## **NEW HAMPSHIRE**

## **NEW JERSEY**

### ***N.J. STAT. ANN. § 2C:11-3 (2009). Murder.***

a. Except as provided in [N.J.S.2C:11-4](#), criminal homicide constitutes murder when:

(1) The actor purposely causes death or serious bodily injury resulting in death; or

(2) The actor knowingly causes death or serious bodily injury resulting in death; or

(3) It is committed when the actor, acting either alone or with one or more other persons, is engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, sexual assault, arson, burglary, kidnapping, carjacking, criminal escape or terrorism pursuant to section 2 of P.L.2002, c.26 ([C.2C:38-2](#)), and in the course of such crime or of immediate flight therefrom, any person causes the death of a person other than one of the participants; except that in any prosecution under this subsection, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) Did not commit the homicidal act or in any way solicit, request, command, importune,

cause or aid the commission thereof; and

(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury.

b. (1) Murder is a crime of the first degree but a person convicted of murder shall be sentenced, except as provided in paragraphs (2), (3) and (4) of this subsection, by the court to a term of 30 years, during which the person shall not be eligible for parole, or be sentenced to a specific term of years which shall be between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole.

(2) If the victim was a law enforcement officer and was murdered while performing his official duties or was murdered because of his status as a law enforcement officer, the person convicted of that murder shall be sentenced by the court to a term of life imprisonment, during which the person shall not be eligible for parole.

(3) A person convicted of murder shall be sentenced to a term of life imprisonment without eligibility for parole if the murder was committed under all of the following circumstances:

(a) The victim is less than 14 years old; and

(b) The act is committed in the course of the commission, whether alone or with one or more persons, of a violation of [N.J.S.2C:14-2](#) or [N.J.S.2C:14-3](#).

(4) Any person convicted under subsection a.(1) or (2) who committed the homicidal act by his own conduct; or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value; or who, as a leader of a narcotics trafficking network as defined in [N.J.S.2C:35-3](#) and in furtherance of a conspiracy enumerated in [N.J.S.2C:35-3](#), commanded or by threat or promise solicited the commission of the offense, or, if the murder occurred during the commission of the crime of terrorism, any person who committed the crime of terrorism, shall be sentenced by the court to life imprisonment without eligibility for parole, which sentence shall be served in a maximum security prison, if a jury finds beyond a reasonable doubt that any of the following aggravating factors exist:

(a) The defendant has been convicted, at any time, of another murder. For purposes of this section, a conviction shall be deemed final when sentence is imposed and may be used as an aggravating factor regardless of whether it is on appeal;

- (b) In the commission of the murder, the defendant purposely or knowingly created a grave risk of death to another person in addition to the victim;
  - (c) The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated assault to the victim;
  - (d) The defendant committed the murder as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value;
  - (e) The defendant procured the commission of the murder by payment or promise of payment of anything of pecuniary value;
  - (f) The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense committed by the defendant or another;
  - (g) The murder was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit murder, robbery, sexual assault, arson, burglary, kidnapping, carjacking or the crime of contempt in violation of subsection b. of [N.J.S.2C:29-9](#);
  - (h) The defendant murdered a public servant, as defined in [N.J.S.2C:27-1](#), while the victim was engaged in the performance of his official duties, or because of the victim's status as a public servant;
  - (i) The defendant: (i) as a leader of a narcotics trafficking network as defined in [N.J.S.2C:35-3](#) and in furtherance of a conspiracy enumerated in [N.J.S.2C:35-3](#), committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network as defined in [N.J.S.2C:35-3](#) in furtherance of a conspiracy enumerated in [N.J.S.2C:35-3](#);
  - (j) The homicidal act that the defendant committed or procured was in violation of paragraph (1) of subsection a. of [N.J.S.2C:17-2](#);
  - (k) The victim was less than 14 years old; or
  - (l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism pursuant to section 2 of P.L.2002, c.26 ([C.2C:38-2](#)).
- (5) A juvenile who has been tried as an adult and convicted of murder shall be sentenced pursuant to paragraph (1), (2) or (3) of this subsection.
- c. (Deleted by amendment, P.L.2007, c.204).
- d. (Deleted by amendment, P.L.2007, c.204).

- e. (Deleted by amendment, P.L.2007, c.204).
- f. (Deleted by amendment, P.L.2007, c.204).
- g. (Deleted by amendment, P.L.2007, c.204).
- h. (Deleted by amendment, P.L.2007, c.204).
- i. For purposes of this section the term "homicidal act" shall mean conduct that causes death or serious bodily injury resulting in death.
- j. In a sentencing proceeding conducted pursuant to this section, the display of a photograph of the victim taken before the homicide shall be permitted.

## **NEW MEXICO**

## **NEW YORK**

### ***N.Y. PENAL LAW § 125.25 (2009). Murder in the second degree.***

A person is guilty of murder in the second degree when:

1. With intent to cause the death of another person, he causes the death of such person or of a third person; except that in any prosecution under this subdivision, it is an affirmative defense that:
  - (a) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime; or
  - (b) The defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the second degree or any other crime; or
2. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person; or
3. Acting either alone or with one or more other persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, [fig 1] criminal

sexual act in the first degree, sexual abuse in the first degree, aggravated sexual abuse, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight therefrom, he, or another participant, if there be any, causes the death of a person other than one of the participants; except that in any prosecution under this subdivision, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:

(a) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and

(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and

(c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and

(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury; or

4. Under circumstances evincing a depraved indifference to human life, and being eighteen years old or more the defendant recklessly engages in conduct which creates a grave risk of serious physical injury or death to another person less than eleven years old and thereby causes the death of such person [fig 1] ; or

5. Being eighteen years old or more, while in the course of committing rape in the first, second or third degree, criminal sexual act in the first, second or third degree, sexual abuse in the first degree, aggravated sexual abuse in the first, second, third or fourth degree, or incest [fig 1] in the first, second or third degree, against a person less than fourteen years old, he or she intentionally causes the death of such person.

Murder in the second degree is a class A-I felony.

“Categories of depraved indifference may be found . . . where a defendant -- acting with a conscious objective not to kill but to harm -- engages in torture or a brutal, prolonged and ultimately fatal course of conduct against a particularly vulnerable victim.” *New York v. Dickerson*, 837 N.Y.S.2d 101 (N.Y. App. Div. 2007) (affirming defendant’s conviction on two counts of murder in the second degree for the starvation and torture of defendant’s five-year-old daughter).

***N.Y. PENAL LAW § 125.27 (2009). Murder in the first degree.***

A person is guilty of murder in the first degree when:

1. With intent to cause the death of another person, he causes the death of such person or of a third person; and

(a) Either:

(i) the intended victim was a police officer as defined in subdivision 34 of section 1.20 of the criminal procedure law who was at the time of the killing engaged in the course of performing his official duties, and the defendant knew or reasonably should

have known that the intended victim was a police officer; or

(ii) the intended victim was a peace officer as defined in paragraph a of subdivision twenty-one, subdivision twenty-three, twenty-four or sixty-two (employees of the division for youth) of section 2.10 of the criminal procedure law who was at the time of the killing engaged in the course of performing his official duties, and the defendant knew or reasonably should have known that the intended victim was such a uniformed court officer, parole officer, probation officer, or employee of the division for youth; or

(iii) the intended victim was an employee of a state correctional institution or was an employee of a local correctional facility as defined in subdivision two of section forty of the correction law, who was at the time of the killing engaged in the course of performing his official duties, and the defendant knew or reasonably should have known that the intended victim was an employee of a state correctional institution or a local correctional facility; or

(iv) at the time of the commission of the killing, the defendant was confined in a state correctional institution or was otherwise in custody upon a sentence for the term of his natural life, or upon a sentence commuted to one of natural life, or upon a sentence for an indeterminate term the minimum of which was at least fifteen years and the maximum of which was natural life, or at the time of the commission of the killing, the defendant had escaped from such confinement or custody while serving such a sentence and had not yet been returned to such confinement or custody; or

(v) the intended victim was a witness to a crime committed on a prior occasion and the death was caused for the purpose of preventing the intended victim's testimony in any criminal action or proceeding whether or not such action or proceeding had been commenced, or the intended victim had previously testified in a criminal action or proceeding and the killing was committed for the purpose of exacting retribution for such prior testimony, or the intended victim was an immediate family member of a witness to a crime committed on a prior occasion and the killing was committed for the purpose of preventing or influencing the testimony of such witness, or the intended victim was an immediate family member of a witness who had previously testified in a criminal action or proceeding and the killing was committed for the purpose of exacting retribution upon such witness for such prior testimony. As used in this subparagraph "immediate family member" means a husband, wife, father, mother, daughter, son, brother, sister, stepparent, grandparent, stepchild or grandchild; or

(vi) the defendant committed the killing or procured commission of the killing pursuant to an agreement with a person other than the intended victim to commit the same for the receipt, or in expectation of the receipt, of anything of pecuniary value from a party to the agreement or from a person other than the intended victim acting at the direction of a party to such agreement; or

(vii) the victim was killed while the defendant was in the course of committing or attempting to commit and in furtherance of robbery, burglary in the first degree or second degree, kidnapping in the first degree, arson in the first degree or second degree, rape in the first degree, [fig 1] criminal sexual act in the first degree, sexual abuse in the first degree, aggravated sexual abuse in the first degree or escape in the first degree, or in the course of and furtherance of immediate flight after committing or attempting to commit any such crime or in the course of and furtherance of immediate flight after attempting to commit the crime of murder in the second degree; provided however, the victim is not a

participant in one of the aforementioned crimes and, provided further that, unless the defendant's criminal liability under this subparagraph is based upon the defendant having commanded another person to cause the death of the victim or intended victim pursuant to section 20.00 of this chapter, this subparagraph shall not apply where the defendant's criminal liability is based upon the conduct of another pursuant to section 20.00 of this chapter; or

(viii) as part of the same criminal transaction, the defendant, with intent to cause serious physical injury to or the death of an additional person or persons, causes the death of an additional person or persons; provided, however, the victim is not a participant in the criminal transaction; or

(ix) prior to committing the killing, the defendant had been convicted of murder as defined in this section or section 125.25 of this article, or had been convicted in another jurisdiction of an offense which, if committed in this state, would constitute a violation of either of such sections; or

(x) the defendant acted in an especially cruel and wanton manner pursuant to a course of conduct intended to inflict and inflicting torture upon the victim prior to the victim's death. As used in this subparagraph, "torture" means the intentional and depraved infliction of extreme physical pain; "depraved" means the defendant relished the infliction of extreme physical pain upon the victim evidencing debasement or perversion or that the defendant evidenced a sense of pleasure in the infliction of extreme physical pain; or

(xi) the defendant intentionally caused the death of two or more additional persons within the state in separate criminal transactions within a period of twenty-four months when committed in a similar fashion or pursuant to a common scheme or plan; or

(xii) the intended victim was a judge as defined in subdivision twenty-three of section 1.20 of the criminal procedure law and the defendant killed such victim because such victim was, at the time of the killing, a judge; [fig 1] or

(xiii) the victim was killed in furtherance of an act of terrorism, as defined in paragraph (b) of subdivision one of section 490.05 of this chapter; and

(b) The defendant was more than eighteen years old at the time of the commission of the crime.

2. In any prosecution under subdivision one, it is an affirmative defense that:

(a) The defendant acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime except murder in the second degree; or

(b) The defendant's conduct consisted of causing or aiding, without the use of duress or deception, another person to commit suicide. Nothing contained in this paragraph shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the second degree or any other crime except murder in the second degree.

Murder in the first degree is a class A-I felony.

## **NORTH CAROLINA**

***N.C. GEN. STAT. § 14-17 (2009). Murder in the first and second degree defined; punishment.***

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in [G.S. 14-288.21](#), poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to [G.S. 15A-2000](#), except that any such person who was under 18 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in [G.S. 90-90\(1\)d.](#), or methamphetamine, when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon.

## **NORTH DAKOTA**

## **OHIO**

## **OKLAHOMA**



## OREGON

***OR. REV. STAT. § 163.115 (2007). Murder; affirmative defense to certain felony murders; sentence of life imprisonment required; minimum term.***

(1) Except as provided in [ORS 163.118](#) and [163.125](#), criminal homicide constitutes murder:

(a) When it is committed intentionally, except that it is an affirmative defense that, at the time of the homicide, the defendant was under the influence of an extreme emotional disturbance;

(b) When it is committed by a person, acting either alone or with one or more persons, who commits or attempts to commit any of the following crimes and in the course of and in furtherance of the crime the person is committing or attempting to commit, or during the immediate flight therefrom, the person, or another participant if there be any, causes the death of a person other than one of the participants:

(A) Arson in the first degree as defined in [ORS 164.325](#);

(B) Criminal mischief in the first degree by means of an explosive as defined in [ORS 164.365](#);

(C) Burglary in the first degree as defined in [ORS 164.225](#);

(D) Escape in the first degree as defined in [ORS 162.165](#);

(E) Kidnapping in the second degree as defined in [ORS 163.225](#);

(F) Kidnapping in the first degree as defined in [ORS 163.235](#);

(G) Robbery in the first degree as defined in [ORS 164.415](#);

(H) Any felony sexual offense in the first degree defined in this chapter;

(I) Compelling prostitution as defined in [ORS 167.017](#); or

(J) Assault in the first degree, as defined in [ORS 163.185](#), and the victim is under 14 years of age, or assault in the second degree, as defined in [ORS 163.175 \(1\)\(a\)](#) or (b), and the victim is under 14 years of age; or

(c) By abuse when a person, recklessly under circumstances manifesting extreme indifference to the value of human life, causes the death of a child under 14 years of age or a dependent person, as defined in [ORS 163.205](#), and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment.

(2) An accusatory instrument alleging murder by abuse under subsection (1)(c) of this section need not allege specific incidents of assault or torture.

(3) It is an affirmative defense to a charge of violating subsection (1)(b) of this section that the defendant:

(a) Was not the only participant in the underlying crime;

(b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid in the commission thereof;(c) Was not armed with a dangerous or deadly weapon;

(d) Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; and

(e) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death.

(4) It is an affirmative defense to a charge of violating subsection (1)(c)(B) of this section that the child or dependent person was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or person or the parent or guardian of the child or person.

(5)(a) A person convicted of murder, who was at least 15 years of age at the time of committing the murder, shall be punished by imprisonment for life.

(b) When a defendant is convicted of murder under this section, the court shall order that the defendant shall be confined for a minimum of 25 years without possibility of parole, release to post-prison supervision, release on work release or any form of temporary leave or employment at a forest or work camp.

(c) At any time after completion of a minimum period of confinement pursuant to paragraph (b) of this subsection, the State Board of Parole and Post-Prison Supervision, upon the petition of a prisoner so confined, shall hold a hearing to determine if the prisoner is likely to be rehabilitated within a reasonable period of time. The sole issue is whether or not the prisoner is likely to be rehabilitated within a reasonable period of time. At the hearing the prisoner has:

(A) The burden of proving by a preponderance of the evidence the likelihood of rehabilitation within a reasonable period of time; and

(B) The right, if the prisoner is without sufficient funds to employ an attorney, to be represented by legal counsel, appointed by the board, at board expense; and

(C) The right to a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought, provided that any subpoena issued on behalf of the prisoner must be issued by the State Board of Parole and Post-Prison Supervision pursuant to rules adopted by the board.

(d) If, upon hearing all of the evidence, the board, upon a unanimous vote of all of its members, finds that the prisoner is capable of rehabilitation and that the terms of the prisoner's confinement should be changed to life imprisonment with the possibility of parole, release to post-prison supervision or work release, it shall enter an order to that effect and the order shall convert the terms of the prisoner's confinement to life imprisonment with the possibility of parole, release to post-prison supervision or work release and may set a release date. Otherwise, the board shall deny the relief sought in the petition.

(e) The board's final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order. (f) Not less than two years after the denial of the relief sought in a petition under paragraph (c) of this subsection, the prisoner may petition again for a change in the terms of confinement. Further petitions for a change may be filed at intervals of not less than two years thereafter.

(6) As used in this section:

(a) "Assault" means to intentionally, knowingly or recklessly cause physical injury to another person. "Assault" does not include the causing of physical injury in a motor vehicle accident that occurs by reason of the reckless conduct of a defendant.

(b) "Neglect or maltreatment" means a violation of [ORS 163.535](#), [163.545](#) or [163.547](#) or a failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of a child under 14 years of age or a dependent person. This paragraph is not intended to replace or affect the duty or standard of care required under ORS chapter 677.

(c) "Pattern or practice" means one or more previous episodes.

(d) "Torture" means to intentionally inflict intense physical pain upon an unwilling victim as a separate objective apart from any other purpose.

***OR. REV. STAT. § 163.125 (2007). Manslaughter in the second degree.***

(1) Criminal homicide constitutes manslaughter in the second degree when:

(a) It is committed recklessly;

(b) A person intentionally causes or aids another person to commit suicide; or

(c) A person, with criminal negligence, causes the death of a child under 14 years of age or a dependent person, as defined in [ORS 163.205](#), and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in [ORS 163.115](#).

(2) Manslaughter in the second degree is a Class B felony.

## **PENNSYLVANIA**

### ***42 PA. CONS. STAT. ANN. § 9711 (2008). Sentencing procedure for murder of the first degree.***

(a) PROCEDURE IN JURY TRIALS.--

(1) After a verdict of murder of the first degree is recorded and before the jury is discharged, the court shall conduct a separate sentencing hearing in which the jury shall determine whether the defendant shall be sentenced to death or life imprisonment.

(2) In the sentencing hearing, evidence concerning the victim and the impact that the death of the victim has had on the family of the victim is admissible. Additionally, evidence may be presented as to any other matter that the court deems relevant and admissible on the question of the sentence to be imposed. Evidence shall include matters relating to any of the aggravating or mitigating circumstances specified in subsections (d) and (e), and information concerning the victim and the impact that the death of the victim has had on the family of the victim. Evidence of aggravating circumstances shall be limited to those circumstances specified in subsection (d).

(3) After the presentation of evidence, the court shall permit counsel to present argument for or against the sentence of death. The court shall then instruct the jury in accordance with subsection (c).

(4) Failure of the jury to unanimously agree upon a sentence shall not impeach or in any way affect the guilty verdict previously recorded.

(b) PROCEDURE IN NONJURY TRIALS AND GUILTY PLEAS.-- If the defendant has waived a jury trial or pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose unless waived by the defendant with the consent

of the Commonwealth, in which case the trial judge shall hear the evidence and determine the penalty in the same manner as would a jury as provided in subsection (a).

(c) INSTRUCTIONS TO JURY.--

(1) Before the jury retires to consider the sentencing verdict, the court shall instruct the jury on the following matters:

(i) the aggravating circumstances specified in subsection (d) as to which there is some evidence.

(ii) the mitigating circumstances specified in subsection (e) as to which there is some evidence.

(iii) aggravating circumstances must be proved by the Commonwealth beyond a reasonable doubt; mitigating circumstances must be proved by the defendant by a preponderance of the evidence.

(iv) the verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance specified in subsection (d) and no mitigating circumstance or if the jury unanimously finds one or more aggravating circumstances which outweigh any mitigating circumstances. The verdict must be a sentence of life imprisonment in all other cases.

(v) the court may, in its discretion, discharge the jury if it is of the opinion that further deliberation will not result in a unanimous agreement as to the sentence, in which case the court shall sentence the defendant to life imprisonment.

(2) The court shall instruct the jury that if it finds at least one aggravating circumstance and at least one mitigating circumstance, it shall consider, in weighing the aggravating and mitigating circumstances, any evidence presented about the victim and about the impact of the murder on the victim's family. The court shall also instruct the jury on any other matter that may be just and proper under the circumstances.

(d) AGGRAVATING CIRCUMSTANCES.-- Aggravating circumstances shall be limited to the following:

(1) The victim was a firefighter, peace officer, public servant concerned in official detention, as defined in [18 Pa.C.S. § 5121](#) (relating to escape), judge of any court in the unified judicial system, the Attorney General of Pennsylvania, a deputy attorney general, district attorney, assistant district attorney, member of the

General Assembly, Governor, Lieutenant Governor, Auditor General, State Treasurer, State law enforcement official, local law enforcement official, Federal law enforcement official or person employed to assist or assisting any law enforcement official in the performance of his duties, who was killed in the performance of his duties or as a result of his official position.

(2) The defendant paid or was paid by another person or had contracted to pay or be paid by another person or had conspired to pay or be paid by another person for the killing of the victim.

(3) The victim was being held by the defendant for ransom or reward, or as a shield or hostage.

(4) The death of the victim occurred while defendant was engaged in the hijacking of an aircraft.

(5) The victim was a prosecution witness to a murder or other felony committed by the defendant and was killed for the purpose of preventing his testimony against the defendant in any grand jury or criminal proceeding involving such offenses.

(6) The defendant committed a killing while in the perpetration of a felony.

(7) In the commission of the offense the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense.

(8) The offense was committed by means of torture.

(9) The defendant has a significant history of felony convictions involving the use or threat of violence to the person.

(10) The defendant has been convicted of another Federal or State offense, committed either before or at the time of the offense at issue, for which a sentence of life imprisonment or death was impossible or the defendant was undergoing a sentence of life imprisonment for any reason at the time of the commission of the offense.

(11) The defendant has been convicted of another murder committed in any jurisdiction and committed either before or at the time of the offense at issue.

(12) The defendant has been convicted of voluntary manslaughter, as defined in [18 Pa.C.S. § 2503](#) (relating to voluntary manslaughter), or a

substantially equivalent crime in any other jurisdiction, committed either before or at the time of the offense at issue.

(13) The defendant committed the killing or was an accomplice in the killing, as defined in [18 Pa.C.S. § 306\(c\)](#) (relating to liability for conduct of another; complicity), while in the perpetration of a felony under the provisions of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and punishable under the provisions of [18 Pa.C.S. § 7508](#) (relating to drug trafficking sentencing and penalties).

(14) At the time of the killing, the victim was or had been involved, associated or in competition with the defendant in the sale, manufacture, distribution or delivery of any controlled substance or counterfeit controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act or similar law of any other state, the District of Columbia or the United States, and the defendant committed the killing or was an accomplice to the killing as defined in [18 Pa.C.S. § 306\(c\)](#), and the killing resulted from or was related to that association, involvement or competition to promote the defendant's activities in selling, manufacturing, distributing or delivering controlled substances or counterfeit controlled substances.

(15) At the time of the killing, the victim was or had been a nongovernmental informant or had otherwise provided any investigative, law enforcement or police agency with information concerning criminal activity and the defendant committed the killing or was an accomplice to the killing as defined in [18 Pa.C.S. § 306\(c\)](#), and the killing was in retaliation for the victim's activities as a nongovernmental informant or in providing information concerning criminal activity to an investigative, law enforcement or police agency.

(16) The victim was a child under 12 years of age.

(17) At the time of the killing, the victim was in her third trimester of pregnancy or the defendant had knowledge of the victim's pregnancy.

(18) At the time of the killing the defendant was subject to a court order restricting in any way the defendant's behavior toward the victim pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) or any other order of a court of common pleas or of the minor judiciary designed in whole or in part to protect the victim from the defendant.

(e) MITIGATING CIRCUMSTANCES.-- Mitigating circumstances shall include the following:

- (1) The defendant has no significant history of prior criminal convictions.
- (2) The defendant was under the influence of extreme mental or emotional disturbance.
- (3) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
- (4) The age of the defendant at the time of the crime.
- (5) The defendant acted under extreme duress, although not such duress as to constitute a defense to prosecution under [18 Pa.C.S. § 309](#) (relating to duress), or acted under the substantial domination of another person.
- (6) The victim was a participant in the defendant's homicidal conduct or consented to the homicidal acts.
- (7) The defendant's participation in the homicidal act was relatively minor.
- (8) Any other evidence of mitigation concerning the character and record of the defendant and the circumstances of his offense.

(f) SENTENCING VERDICT BY THE JURY.--

(1) After hearing all the evidence and receiving the instructions from the court, the jury shall deliberate and render a sentencing verdict. In rendering the verdict, if the sentence is death, the jury shall set forth in such form as designated by the court the findings upon which the sentence is based.

(2) Based upon these findings, the jury shall set forth in writing whether the sentence is death or life imprisonment.

(g) RECORDING SENTENCING VERDICT.-- Whenever the jury shall agree upon a sentencing verdict, it shall be received and recorded by the court. The court shall thereafter impose upon the defendant the sentence fixed by the jury.

(h) REVIEW OF DEATH SENTENCE.--

(1) A sentence of death shall be subject to automatic review by the Supreme Court of Pennsylvania pursuant to its rules.



(2) In addition to its authority to correct errors at trial, the Supreme Court shall either affirm the sentence of death or vacate the sentence of death and remand for further proceedings as provided in paragraph (4).

(3) The Supreme Court shall affirm the sentence of death unless it determines that:

(i) the sentence of death was the product of passion, prejudice or any other arbitrary factor; or

(ii) the evidence fails to support the finding of at least one aggravating circumstance specified in subsection (d)

(iii) Deleted.

(4) If the Supreme Court determines that the death penalty must be vacated because none of the aggravating circumstances are supported by sufficient evidence, then it shall remand for the imposition of a life imprisonment sentence. If the Supreme Court determines that the death penalty must be vacated for any other reason, it shall remand for a new sentencing hearing pursuant to subsections (a) through (g).

(i) RECORD OF DEATH SENTENCE TO GOVERNOR.-- Where a sentence of death is upheld by the Supreme Court, the prothonotary of the Supreme Court shall transmit to the Governor a full and complete record of the trial, sentencing hearing, imposition of sentence, opinion and order by the Supreme Court within 30 days of one of the following, whichever occurs first:

(1) the expiration of the time period for filing a petition for writ of certiorari or extension thereof where neither has been filed;

(2) the denial of a petition for writ of certiorari; or

(3) the disposition of the appeal by the United States Supreme Court, if that court grants the petition for writ of certiorari.

Notice of this transmission shall contemporaneously be provided to the Secretary of Corrections.

(j) to (o) Repealed. 1998, June 18, P.L. 622, No. 80, effective in 60 days.

## **RHODE ISLAND**

### ***R.I. GEN. LAWS § 11-23-2 (2009). Penalties for murder.***

Every person guilty of murder in the first degree shall be imprisoned for life. Every person guilty of murder in the first degree: (1) committed intentionally while engaged in the commission of another capital offense or other felony for which life imprisonment may be imposed; (2) committed in a manner creating a great risk of death to more than one person by means of a weapon or device or substance which would normally be hazardous to the life of more than one person; (3) committed at the direction of another person in return for money or any other thing of monetary value from that person; (4) committed in a manner involving torture or an aggravated battery to the victim; (5) committed against any member of the judiciary, law enforcement officer, corrections employee, assistant attorney general or special assistant attorney general, or firefighter arising from the lawful performance of his or her official duties; (6) committed by a person who at the time of the murder was committed to confinement in the adult correctional institutions or the state reformatory for women upon conviction of a felony; or (7) committed during the course of the perpetration or attempted perpetration of felony manufacture, sale, delivery or other distribution of a controlled substance otherwise prohibited by the provisions of chapter 28 of title 21; shall be imprisoned for life and if ordered by the court pursuant to chapter 19.2 of title 12 that person shall not be eligible for parole from imprisonment. Every person guilty of murder in the second degree shall be imprisoned for not less than ten (10) years and may be imprisoned for life.

## **SOUTH CAROLINA**

### ***S.C. CODE ANN. § 16-3-20 (2007). Punishment for murder: separate sentencing proceeding to determine whether sentence should be death or life imprisonment.***

(A) A person who is convicted of or pleads guilty to murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, "life imprisonment" means until death of the offender without the possibility of parole, and when requested by the State or the defendant, the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. In cases where the defendant is eligible for parole, the judge must charge the applicable parole eligibility

statute. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years required by this section. Under no circumstances may a female who is pregnant be executed so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death to life imprisonment under the provisions of Section 14 of Article IV of the Constitution of South Carolina, 1895, the commuted is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection.

(B) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of South Carolina or the applicable laws of either. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed.

(C) The judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

(a) Statutory aggravating circumstances:

(1) The murder was committed while in the commission of the following crimes or acts:

(a) criminal sexual conduct in any degree;

- (b) kidnapping;
  - (c) burglary in any degree;
  - (d) robbery while armed with a deadly weapon;
  - (e) larceny with use of a deadly weapon;
  - (f) killing by poison;
  - (g) drug trafficking as defined in Section 44-53-370(e), 44-53-375(B), 44-53-440, or 44-53-445;
  - (h) physical torture;
  - (i) dismemberment of a person; or
  - (j) arson in the first degree as defined in Section 16-11-110(A).
- (2) The murder was committed by a person with a prior conviction for murder.
- (3) The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.
- (4) The offender committed the murder for himself or another for the purpose of receiving money or a thing of monetary value.
- (5) The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.
- (6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.
- (7) The murder of a federal, state, or local law enforcement officer or former federal, state, or local law enforcement officer, peace officer or former peace officer, corrections officer or former corrections officer, including a county or municipal corrections officer or a former county or municipal corrections officer, a county or municipal detention facility employee or former county or municipal detention facility employee, or fireman or former fireman during or because of the performance of his official duties.
- (8) The murder of a family member of an official listed in subitems (5) and (7) above with the intent to impede or retaliate against the official. "Family member" means a spouse, parent, brother, sister, child, or person to whom the official stands in the place of a parent or a person living in the official's household and related to him by blood or

marriage.

(9) Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct.

(10) The murder of a child eleven years of age or under.

(11) The murder of a witness or potential witness committed at any time during the criminal process for the purpose of impeding or deterring prosecution of any crime.

(12) The murder was committed by a person deemed a sexually violent predator pursuant to the provisions of Chapter 48, Title 44, or a person deemed a sexually violent predator who is released pursuant to Section 44-48-120.

(b) Mitigating circumstances:

(1) The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

(2) The murder was committed while the defendant was under the influence of mental or emotional disturbance.

(3) The victim was a participant in the defendant's conduct or consented to the act.

(4) The defendant was an accomplice in the murder committed by another person and his participation was relatively minor.

(5) The defendant acted under duress or under the domination of another person.

(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(7) The age or mentality of the defendant at the time of the crime.

(8) The defendant was provoked by the victim into committing the murder.

(9) The defendant was below the age of eighteen at the time of the crime.

(10) The defendant had mental retardation at the time of the crime. "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

The statutory instructions as to statutory aggravating and mitigating circumstances must be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances which it found beyond a

reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circumstances beyond a reasonable doubt, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. In nonjury cases the judge shall make the designation of the statutory aggravating circumstance or circumstances. Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.

Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. The trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. Where a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment as provided in subsection (A). Before dismissing the jury, the trial judge shall question the jury as to whether or not it found a statutory aggravating circumstance or circumstances beyond a reasonable doubt. If the jury does not unanimously find any statutory aggravating circumstances or circumstances beyond a reasonable doubt, it shall not make a sentencing recommendation. Where a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. No person sentenced to life imprisonment or a mandatory minimum term of imprisonment for thirty years under this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for such penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment as provided in subsection (A).

(D) Notwithstanding the provisions of Section 14-7-1020, in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense.

(E) In a criminal action in which a defendant is charged with a crime which may be punishable by death, a person may not be disqualified, excused, or excluded from service as a juror by reason of his beliefs or attitudes against capital punishment unless such beliefs or attitudes would render him unable to return a verdict according to law.

## **SOUTH DAKOTA**

## TENNESSEE

### *TENN. CODE ANN. § 39-13-204 (2009). Sentencing for first degree murder.*

(a) Upon a trial for first degree murder, should the jury find the defendant guilty of first degree murder, it shall not fix punishment as part of the verdict, but the jury shall fix the punishment in a separate sentencing hearing to determine whether the defendant shall be sentenced to death, to imprisonment for life without possibility of parole, or to imprisonment for life. The separate sentencing hearing shall be conducted as soon as practicable before the same jury that determined guilt, subject to the provisions of subsection (k) relating to certain retrials on punishment.

(b) In the sentencing proceeding, the attorney for the state shall be allowed to make an opening statement to the jury and then the attorney for the defendant shall also be allowed such statement; provided, that the waiver of opening statement by one party shall not preclude the opening statement by the other party.

(c) In the sentencing proceeding, evidence may be presented as to any matter that the court deems relevant to the punishment, and may include, but not be limited to, the nature and circumstances of the crime; the defendant's character, background history, and physical condition; any evidence tending to establish or rebut the aggravating circumstances enumerated in subsection (i); and any evidence tending to establish or rebut any mitigating factors. Any such evidence that the court deems to have probative value on the issue of punishment may be received, regardless of its admissibility under the rules of evidence; provided, that the defendant is accorded a fair opportunity to rebut any hearsay statements so admitted. However, this subsection (c) shall not be construed to authorize the introduction of any evidence secured in violation of the constitution of the United States or the constitution of Tennessee. In all cases where the state relies upon the aggravating factor that the defendant was previously convicted of one (1) or more felonies, other than the present charge, whose statutory elements involve the use of violence to the person, either party shall be permitted to introduce evidence concerning the facts and circumstances of the prior conviction. Such evidence shall not be construed to pose a danger of creating unfair prejudice, confusing the issues, or misleading the jury and shall not be subject to exclusion on the ground that the probative value of the evidence is outweighed by prejudice to either party. Such evidence shall be used by the jury in determining the weight to be accorded the aggravating factor. The court shall permit a member or members, or a representative or representatives of the victim's family to testify at the sentencing hearing about the victim and about the impact of the murder on the family of the victim and other relevant persons. The evidence may be considered by the jury in determining which sentence to impose. The court shall permit members or representatives of the victim's family to attend the trial, and those persons shall not be excluded because the person or persons shall testify during the sentencing proceeding as to the impact of the offense.

(d) In the sentencing proceeding, the state shall be allowed to make a closing argument to the jury; and then the attorney for the defendant shall also be allowed such argument, with the state having the right of closing.

(e) (1) After closing arguments in the sentencing hearing, the trial judge shall include instructions for the jury to weigh and consider any of the statutory aggravating circumstances set forth in subsection (i), which may be raised by the evidence at either the guilt or sentencing hearing, or both. The trial judge shall also include instructions for the jury to weigh and consider any mitigating circumstances raised by the evidence at either the guilt or sentencing hearing, or both, which shall include, but not be limited to, those circumstances set forth in subsection (j). These instructions and the manner of arriving at a sentence shall be given in the oral charge and in writing to the jury for its deliberations. However, a reviewing court shall not set aside a sentence of death or of imprisonment for life without the possibility of parole on the ground that the trial court did not specifically instruct the jury as to a requested mitigating factor that is not enumerated in subsection (j).

(2) The trial judge shall provide the jury three (3) separate verdict forms, as specified by subdivisions (f)(1), (f)(2), and (g)(2)(B). The jury shall be instructed that a defendant who receives a sentence of imprisonment for life shall not be eligible for parole consideration until the defendant has served at least twenty-five (25) full calendar years of the sentence. The jury shall also be instructed that a defendant who receives a sentence of imprisonment for life without possibility of parole shall never be eligible for release on parole.

(f) (1) If the jury unanimously determines that no statutory aggravating circumstance has been proven by the state beyond a reasonable doubt, the sentence shall be imprisonment for life. The jury shall then return its verdict to the judge upon a form provided by the court, which may appear substantially as follows:

#### PUNISHMENT OF IMPRISONMENT FOR LIFE

(2) If the jury unanimously determines that a statutory aggravating circumstance or circumstances have been proven by the state beyond a reasonable doubt, but that such circumstance or circumstances have not been proven by the state to outweigh any mitigating circumstance or circumstances beyond a reasonable doubt, the jury shall, in its considered discretion, sentence the defendant either to imprisonment for life without possibility of parole or to imprisonment for life. The trial judge shall instruct the jury that, in choosing between the sentences of imprisonment for life without possibility of parole and imprisonment for life, the jury shall weigh and consider the statutory aggravating circumstance or circumstances proven by the state beyond a reasonable doubt and any mitigating circumstance or circumstances. In its verdict, the jury shall specify the statutory aggravating circumstance or circumstances proven by the state beyond a reasonable doubt and shall return its verdict to the judge upon a form provided by the court, which may appear substantially as follows:



## PUNISHMENT OF IMPRISONMENT FOR LIFE WITHOUT POSSIBILITY OF PAROLE OR IMPRISONMENT FOR LIFE

(g) (1) The sentence shall be death, if the jury unanimously determines that:

(A) At least one (1) statutory aggravating circumstance or several statutory aggravating circumstances have been proven by the state beyond a reasonable doubt; and

(B) Such circumstance or circumstances have been proven by the state to outweigh any mitigating circumstances beyond a reasonable doubt.

(2) (A) If the death penalty is the sentence of the jury, the jury shall:

(i) Reduce to writing the statutory aggravating circumstance or statutory aggravating circumstances so found; and

(ii) Signify that the state has proven beyond a reasonable doubt that the statutory aggravating circumstance or circumstances outweigh any mitigating circumstances.

(B) These findings and verdict shall be returned to the judge upon a form provided by the court, which may appear substantially as follows:

## PUNISHMENT OF DEATH

(h) If the jury cannot ultimately agree on punishment, the trial judge shall inquire of the foreperson of the jury whether the jury is divided over imposing a sentence of death. If the jury is divided over imposing a sentence of death, the judge shall instruct the jury that in further deliberations, the jury shall only consider the sentences of imprisonment for life without possibility of parole and imprisonment for life. If, after further deliberations, the jury still cannot agree as to sentence, the trial judge shall dismiss the jury and the judge shall impose a sentence of imprisonment for life. The judge shall not instruct the jury, nor shall the attorneys be permitted to comment at any time to the jury, on the effect of the jury's failure to agree on a punishment.

(i) No death penalty or sentence of imprisonment for life without possibility of parole shall be imposed, except upon a unanimous finding that the state has proven beyond a reasonable doubt the existence of one (1) or more of the statutory aggravating circumstances, which are limited to the following:

(1) The murder was committed against a person less than twelve (12) years of age and the defendant was eighteen (18) years of age or older;

(2) The defendant was previously convicted of one (1) or more felonies, other than the present charge, whose statutory elements involve the use of violence to the person;

(3) The defendant knowingly created a great risk of death to two (2) or more persons, other than the victim murdered, during the act of murder;

(4) The defendant committed the murder for remuneration or the promise of remuneration, or employed another to commit the murder for remuneration or the promise of remuneration;

(5) The murder was especially heinous, atrocious, or cruel, in that it involved torture or serious physical abuse beyond that necessary to produce death;

(6) The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another;

(7) The murder was knowingly committed, solicited, directed, or aided by the defendant, while the defendant had a substantial role in committing or attempting to commit, or was fleeing after having a substantial role in committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, theft, kidnapping, aircraft piracy, or unlawful throwing, placing or discharging of a destructive device or bomb;

(8) The murder was committed by the defendant while the defendant was in lawful custody or in a place of lawful confinement or during the defendant's escape from lawful custody or from a place of lawful confinement;

(9) The murder was committed against any law enforcement officer, corrections official, corrections employee, probation and parole officer, emergency medical or rescue worker, emergency medical technician, paramedic or firefighter, who was engaged in the performance of official duties, and the defendant knew or reasonably should have known that the victim was a law enforcement officer, corrections official, corrections employee, probation and parole officer, emergency medical or rescue worker, emergency medical technician, paramedic or firefighter engaged in the performance of official duties;

(10) The murder was committed against any present or former judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general, due to or because of the exercise of the victim's official duty or status and the defendant knew that the victim occupied such office;

(11) The murder was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official;

(12) The defendant committed "mass murder," which is defined as the murder of three (3) or more persons, whether committed during a single criminal episode or at different times within a forty-eight-month period;

(13) The defendant knowingly mutilated the body of the victim after death;

(14) The victim of the murder was seventy (70) years of age or older; or the victim of the murder was particularly vulnerable due to a significant handicap or significant disability, whether mental or physical, and at the time of the murder the defendant knew or reasonably should have known of such handicap or disability; or

(15) The murder was committed in the course of an act of terrorism.

(j) In arriving at the punishment, the jury shall consider, pursuant to the provisions of this section, any mitigating circumstances, which shall include, but are not limited to, the following:

(1) The defendant has no significant history of prior criminal activity;

(2) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(3) The victim was a participant in the defendant's conduct or consented to the act;

(4) The murder was committed under circumstances that the defendant reasonably believed to provide a moral justification for the defendant's conduct;

(5) The defendant was an accomplice in the murder committed by another person and the defendant's participation was relatively minor;

(6) The defendant acted under extreme duress or under the substantial domination of another person;

(7) The youth or advanced age of the defendant at the time of the crime;

(8) The capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of the law was substantially impaired as a result of mental disease or defect or intoxication, which was insufficient to establish a defense to the crime but which substantially affected the defendant's judgment; and

(9) Any other mitigating factor that is raised by the evidence produced by either the prosecution or defense, at either the guilt or sentencing hearing.

(k) Upon motion for a new trial, after a conviction of first degree murder, if the court finds error in the trial determining guilt, a new trial on both guilt and sentencing shall be held; but if the court finds error alone in the trial determining punishment, a new trial on the issue of punishment alone shall be held by a new jury empanelled for that purpose. If the trial court, or any other court with jurisdiction to do so, orders that a defendant convicted of first degree murder, whether the sentence is death, imprisonment for life without possibility of parole or imprisonment for life, be granted a new trial, either as to

guilt or punishment, or both, the new trial shall include the possible punishments of death, imprisonment for life without possibility of parole or imprisonment for life.

## TEXAS

## UTAH

### *UTAH CODE ANN. § 76-5-202 (2008). Aggravated Murder.*

(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

(a) the homicide was committed by a person who is confined in a jail or other correctional institution;

(b) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which two or more persons were killed, or during which the actor attempted to kill one or more persons in addition to the victim who was killed;

(c) the actor knowingly created a great risk of death to a person other than the victim and the actor;

(d) the homicide was committed incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child abuse as defined in [Subsection 76-5-109\(2\)\(a\)](#), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;

(e) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as defined in [Subsection 76-9-704\(2\)\(e\)](#);

(f) the homicide was committed for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant's or another's escape from lawful custody;

(g) the homicide was committed for pecuniary gain;

(h) the defendant committed, or engaged or employed another person to commit the homicide pursuant to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;

(i) the actor previously committed or was convicted of:

(i) aggravated murder, [Section 76-5-202](#);

(ii) attempted aggravated murder, [Section 76-5-202](#);

(iii) murder, [Section 76-5-203](#);

(iv) attempted murder, [Section 76-5-203](#); or

(v) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(i);

(j) the actor was previously convicted of:

(i) aggravated assault, [Subsection 76-5-103\(2\)](#);

(ii) mayhem, [Section 76-5-105](#);

(iii) kidnapping, [Section 76-5-301](#);

(iv) child kidnapping, [Section 76-5-301.1](#);

(v) aggravated kidnapping, [Section 76-5-302](#);

(vi) rape, [Section 76-5-402](#);

(vii) rape of a child, [Section 76-5-402.1](#);

(viii) object rape, [Section 76-5-402.2](#);

(ix) object rape of a child, [Section 76-5-402.3](#);

(x) forcible sodomy, [Section 76-5-403](#);

(xi) sodomy on a child, [Section 76-5-403.1](#);

(xii) aggravated sexual abuse of a child, [Section 76-5-404.1](#);

(xiii) aggravated sexual assault, [Section 76-5-405](#);

(xiv) aggravated arson, [Section 76-6-103](#);

(xv) aggravated burglary, [Section 76-6-203](#);

(xvi) aggravated robbery, [Section 76-6-302](#); or

(xvii) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(j);

(k) the homicide was committed for the purpose of:

(i) preventing a witness from testifying;

(ii) preventing a person from providing evidence or participating in any legal proceedings or official investigation;

(iii) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or

(iv) disrupting or hindering any lawful governmental function or enforcement of laws;

(l) the victim is or has been a local, state, or federal public official, or a candidate for public office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy;

(m) the victim is or has been a peace officer, law enforcement officer, executive officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position;

(n) the homicide was committed:

(i) by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered; or

(ii) by means of any weapon of mass destruction as defined in [Section 76-10-401](#);

(o) the homicide was committed during the act of unlawfully assuming control of any aircraft, train, or other public conveyance by use of threats or force with intent to obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard, or to direct the route or movement of the public conveyance or otherwise exert control over the public conveyance;

(p) the homicide was committed by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

(q) the victim was a person held or otherwise detained as a shield, hostage, or for ransom;

(r) the homicide was committed in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the victim before death;

(s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or after death, in a manner demonstrating the actor's depravity of mind; or

(t) the victim was younger than 14 years of age.

(2) Criminal homicide constitutes aggravated murder if the actor, with reckless indifference to human life, causes the death of another incident to an act, scheme, course of conduct, or criminal episode during which the actor is a major participant in the commission or attempted commission of:

(a) child abuse, [Subsection 76-5-109\(2\)\(a\)](#);

(b) child kidnapping, [Section 76-5-301.1](#);

(c) rape of a child, [Section 76-5-402.1](#);

(d) object rape of a child, [Section 76-5-402.3](#);

(e) sodomy on a child, [Section 76-5-403.1](#); or

(f) sexual abuse or aggravated sexual abuse of a child, [Section 76-5-404.1](#).

(3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder is a capital felony.

(b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is a noncapital first degree felony punishable by imprisonment for life without parole or by an indeterminate term of not less than 20 years and which may be for life.

(c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty. The notice shall be served on the defendant or defense counsel and filed with the court.

(ii) Notice of intent to seek the death penalty may be served and filed more than 60 days after the arraignment upon written stipulation of the parties or upon a finding by the court of good cause.

(d) Without the consent of the prosecutor, the court may not accept a plea of guilty to noncapital first degree felony aggravated murder during the period in which the prosecutor may file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

(4) (a) It is an affirmative defense to a charge of aggravated murder or attempted aggravated murder that the defendant caused the death of another or attempted to cause the death of another:

(i) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse; or

(ii) under a reasonable belief that the circumstances provided a legal justification or excuse for the defendant's conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) Under Subsection (4)(a)(i), emotional distress does not include:

(i) a condition resulting from mental illness as defined in [Section 76-2-305](#); or

(ii) distress that is substantially caused by the defendant's own conduct.

(c) The reasonableness of an explanation or excuse under Subsection (4)(a)(i) or the reasonable belief of the actor under Subsection (4)(a)(ii) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(d) This affirmative defense reduces charges only as follows:

(i) aggravated murder to murder; and

(ii) attempted aggravated murder to attempted murder.

(5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes a separate offense does not merge with the crime of aggravated murder.

(b) A person who is convicted of aggravated murder, based on an aggravating circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

## VERMONT



## **VIRGINIA**

### ***VA. CODE ANN. § 19.2-264.2 (2009). Conditions for imposition of death sentence.***

In assessing the penalty of any person convicted of an offense for which the death penalty may be imposed, a sentence of death shall not be imposed unless the court or jury shall (1) after consideration of the past criminal record of convictions of the defendant, find that there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing serious threat to society or that his conduct in committing the offense for which he stands charged was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim; and (2) recommend that the penalty of death be imposed.

## **WASHINGTON**

## **WEST VIRGINIA**

## **WISCONSIN**

## **WYOMING**

### ***WYO. STAT. ANN. § 6-2-101 (2008). Murder in the first degree; penalty***

(a) Whoever purposely and with premeditated malice, or in the perpetration of, or attempt to perpetrate, any sexual assault, sexual abuse of a minor, arson, robbery, burglary, escape, resisting arrest, kidnapping or abuse of a child under the age of sixteen (16) years, kills any human being is guilty of murder in the first degree.

(b) A person convicted of murder in the first degree shall be punished by death, life

imprisonment without parole or life imprisonment according to law, except that no person shall be subject to the penalty of death for any murder committed before the defendant attained the age of eighteen (18) years.

(c) A person convicted of murder in the first degree in a case in which the state seeks the death penalty shall be sentenced in accordance with the provisions of W.S. 6-2-102. In all other cases, including any case in which the state has determined not to seek the death penalty at any stage of the proceeding, the judge shall determine the sentence of life imprisonment without parole or life imprisonment taking into consideration any negotiated plea agreement and any evidence relevant to a determination of sentence which the court deems to have probative value.

***WYO. STAT. ANN. § 6-2-102 (2008). Presentence hearing for murder in the first degree; mitigating and aggravating circumstances; effect of error in hearing***

(a) Upon conviction of a person for murder in the first degree in a case in which the state seeks the death penalty, the judge shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death, life imprisonment without parole or life imprisonment. The hearing shall be conducted before the judge alone if:

- (i) The defendant was convicted by a judge sitting without a jury;
- (ii) The defendant has pled guilty; or
- (iii) The defendant waives a jury with respect to the sentence.

(b) In all other cases the sentencing hearing shall be conducted before the jury which determined the defendant's guilt or, if the judge for good cause shown discharges that jury, with a new jury impaneled for that purpose. The jury shall be instructed that if the jury does not unanimously determine that the defendant should be sentenced to death, then the defendant shall be sentenced to life imprisonment without parole or life imprisonment.

(c) The judge or jury shall hear evidence as to any matter that the court deems relevant to a determination of the sentence, and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (h) and (j) of this section. Any evidence which the court deems to have probative value may be received regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements, and provided further that only such evidence in aggravation as the state has made known to the defendant or his counsel prior to his trial shall be admissible.

(d) Upon conclusion of the evidence and arguments the judge shall give the jury appropriate instructions, including instructions as to any aggravating or mitigating circumstances, as defined in subsections (h) and (j) of this section, or proceed as provided

by paragraph (iii) of this subsection:

(i) After hearing all the evidence, the jury shall deliberate and render a sentence based upon the following:

(A) Whether one (1) or more aggravating circumstances exist beyond a reasonable doubt as set forth in subsection (h) of this section;

(B) Whether, by a preponderance of the evidence, mitigating circumstances exist as set forth in subsection (j) of this section; and

(C) The mere number of aggravating or mitigating circumstances found shall have no independent significance.

(ii) The jury shall consider aggravating and mitigating circumstances unanimously found to exist, and each individual juror may also consider any mitigating circumstances found by that juror to exist. If the jury reports unanimous agreement to impose the sentence of death, the court shall discharge the jury and shall impose the sentence of death. If the jury is unable to reach a unanimous verdict imposing the sentence of death within a reasonable time, the court shall instruct the jury to determine by a unanimous vote whether the penalty of life imprisonment without parole shall be imposed. If the jury is unable to reach a unanimous verdict imposing the penalty of life imprisonment without parole within a reasonable time, the court shall discharge the jury and impose the sentence of life imprisonment;

(iii) In nonjury cases, the judge shall determine if any aggravating or mitigating circumstances exist and impose sentence within the limits prescribed by law, based upon the considerations enumerated in subparagraphs (A), (B) and (C) of paragraph (i) of this subsection.

(e) The death penalty shall not be imposed unless at least one (1) of the aggravating circumstances set forth in subsection (h) of this section is found. In nonjury cases the judge shall make such designation. The jury, if its verdict is a sentence of death, shall designate in writing signed by the foreman of the jury:

(i) The aggravating circumstance or circumstances which it unanimously found beyond a reasonable doubt;

(ii) The mitigating circumstance or circumstances which it unanimously found by a preponderance of the evidence; and

(iii) The mitigating circumstance or circumstances which any individual juror found by a preponderance of the evidence.

(f) Repealed by Laws 2001, ch. 96, § 3.

(g) If the trial court is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment.

(h) Aggravating circumstances are limited to the following:

(i) The murder was committed by a person:

(A) Confined in a jail or correctional facility;

(B) On parole or on probation for a felony;

(C) After escaping detention or incarceration; or

(D) Released on bail pending appeal of his conviction.

(ii) The defendant was previously convicted of another murder in the first degree or a felony involving the use or threat of violence to the person;

(iii) The defendant knowingly created a great risk of death to two (2) or more persons;

(iv) The murder was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any aircraft piracy or the unlawful throwing, placing or discharging of a destructive device or bomb;

(v) The murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

(vi) The murder was committed for compensation, the collection of insurance benefits or other similar pecuniary gain;

(vii) The murder was especially atrocious or cruel, being unnecessarily torturous to the victim;

(viii) The murder of a judicial officer, former judicial officer, district attorney, former district attorney, defending attorney, peace officer, juror or witness, during or because of the exercise of his official duty or because of the victim's former or present official status;

(ix) The defendant knew or reasonably should have known the victim was less than seventeen (17) years of age or older than sixty-five (65) years of age;

(x) The defendant knew or reasonably should have known the victim was especially vulnerable due to significant mental or physical disability;

(xi) The defendant poses a substantial and continuing threat of future dangerousness or is likely to commit continued acts of criminal violence;

(xii) The defendant killed another human being purposely and with premeditated malice and while engaged in, or as an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, sexual assault, arson, burglary, kidnapping or abuse of a child under the age of sixteen (16) years.

(j) Mitigating circumstances shall include the following:

(i) The defendant has no significant history of prior criminal activity;

(ii) The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(iii) The victim was a participant in the defendant's conduct or consented to the act;

(iv) The defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor;

(v) The defendant acted under extreme duress or under the substantial domination of another person;

(vi) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired;

(vii) The age of the defendant at the time of the crime;

(viii) Any other fact or circumstance of the defendant's character or prior record or matter surrounding his offense which serves to mitigate his culpability.

***WYO. STAT. ANN. § 6-2-104 (2008). Definitions***

(a) As used in W.S. 6-1-101 through 6-10-203 unless otherwise defined:

(i) "Bodily injury" means physical pain, illness or any impairment of physical condition;

(ii) "Coin machine" means a mechanical or electronic device or receptacle designed to:

(A) Receive a coin, bill or token made for that purpose; and

(B) Automatically offer, provide or assist in providing or permit the acquisition of property or service in return for the insertion of the coin, bill or token.

(iii) "Criminal negligence" is defined as the following conduct: A person acts with criminal negligence when, through a gross deviation from the standard of care that a reasonable person would exercise, he fails to perceive a substantial and unjustifiable risk that the harm he is accused of causing will occur, and the harm results. The risk shall be

of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation;

(iv) "Deadly weapon" means but is not limited to a firearm, explosive or incendiary material, motorized vehicle, an animal or other device, instrument, material or substance, which in the manner it is used or is intended to be used is reasonably capable of producing death or serious bodily injury;

(v) "Occupied structure" means a structure or vehicle whether or not a person is actually present:

(A) Where any person lives or carries on business or other calling;

(B) Where people assemble for purposes of business, government, education, religion, entertainment or public transportation;

(C) Which is used for overnight accommodation of persons; or

(D) In which a person may reasonably be expected to be present.

(vi) "Peace officer" includes the following officers assigned to duty in the state of Wyoming:

(A) Any duly authorized sheriff, under sheriff or deputy sheriff;

(B) Any duly authorized member of a municipal police force, a college or university campus police force or the Wyoming highway patrol;

(C) Game and fish law enforcement personnel qualified pursuant to W.S. 9-1-701 through 9-1-707 and:

(I) When enforcing felony statutes following observation or discovery of the commission of a felony which was observed or discovered during the performance of their statutory duties;

(II) While responding to requests to assist other peace officers performing their official duties or when enforcing a valid arrest warrant for any crime; or

(III) When enforcing any provision of title 23 and chapter 13 of title 41, any rule and regulation promulgated by the Wyoming game and fish commission or any other statute for which they are granted statutory enforcement authority.

(D) Agents of the division of criminal investigation appointed pursuant to W.S. 9-1-613 who have qualified pursuant to W.S. 9-1-701 through 9-1-707;

(E) Any duly authorized arson investigator employed by the state fire marshal;

(F) Investigators and brand inspectors of the Wyoming livestock board who have qualified pursuant to W.S. 9-1-701 through 9-1-707 when:

(I) Enforcing W.S. 6-3-201, 6-3-203, 6-3-401 through 6-3-403, 6-3-407, 6-3-410, 6-3-601 through 6-3-603, 6-3-607, 6-3-610 through 6-3-612, 6-9-202, 35-10-101, 35-10-102 and 35-10-104, the provisions of title 11 and any laws prohibiting theft or mutilation of livestock or any part thereof and any rule or regulation promulgated by the Wyoming livestock board or any other law for which they are granted statutory enforcement authority;

(II) Responding to a request to assist another peace officer as defined in this paragraph performing his official duty; or

(III) Enforcing a valid arrest warrant for a crime specified in subdivision (F)(I) of this paragraph.

(G) Federal law enforcement agents;

(H) Investigators employed by the Wyoming state board of outfitters and professional guides and qualified pursuant to W.S. 9-1-701 through 9-1-707, when enforcing W.S. 23-2-401 and 23-2-406 through 23-2-418 and board rules and regulations promulgated under W.S. 23-2-410(a)(ii);

(J) Any duly authorized detention officer who has qualified pursuant to W.S. 9-1-701 through 9-1-707, when engaged in the performance of his duties while supervising a detainee who has been convicted as a felon;

(K) Any person employed by the state department of corrections on a full-time basis as a correctional officer to care for, supervise and control persons under the custody of the department, when the person is engaged in the performance of his duties;

(M) Any peace officer certified by another state who has been appointed as a special deputy sheriff of a Wyoming county pursuant to W.S. 18-3-602(c);

(N) Certified law enforcement officers of an adjoining state while responding to a request for assistance from a peace officer in this state pursuant to the "Law Enforcement Interstate Mutual Aid Act" or other lawful request;

(O) The director and full-time staff instructors of the Wyoming law enforcement academy when duly appointed and acting pursuant to W.S. 9-1-633(b); and

(P) Any superintendent, assistant superintendent or full-time park ranger of any state park or historic site who has qualified pursuant to W.S. 9-1-701 through 9-1-707, when acting within the boundaries of the state park or historic site or when responding to a request to assist other peace officers acting within the scope of their official duties in

their own jurisdiction.

(vii) "Person" includes an individual, partnership, corporation, joint stock company or any other association or entity, public or private;

(viii) "Property" means anything of value whether tangible or intangible, real or personal, public or private;

(ix) "Recklessly" is defined as the following conduct: A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that the harm he is accused of causing will occur, and the harm results. The risk shall be of such nature and degree that disregarding it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation;

(x) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes miscarriage, severe disfigurement or protracted loss or impairment of the function of any bodily member or organ;

(xi) "Vehicle" means any device by which persons or property may be moved, carried or transported over land, water or air;

(xii) "Violent felony" means murder, manslaughter, kidnapping, sexual assault in the first or second degree, robbery, aggravated assault, aircraft hijacking, arson in the first or second degree or aggravated burglary or a violation of W.S. 6-2-314(a)(i) or 6-2-315(a)(ii);

(xiii) "Torture", "torment" or "cruelty" means every act, omission or neglect whereby the willful and malicious infliction of pain or suffering is caused, permitted or allowed to continue when there is a reasonable remedy or relief.

## **U.S. TERRITORIES**

## **AMERICAN SAMOA**

## **GUAM**



## **PUERTO RICO**

### ***P.R. LAWS ANN. tit. 33, § 4002 (2006). Degrees of Murder***

Murder in the first degree shall be:

(a) Any murder perpetrated by means of poison, lying in wait or torture, or any willful, deliberate and premeditated killing, or which is committed while perpetrating or attempting to perpetrate aggravated arson, rape, sodomy, robbery, carjacking, burglary, kidnapping, mayhem, mutilation or escape.

(b) Causing the death of a member of the Police, a member of the Municipal Guard, a Penal Guard, or a member of the National Guard while substituting or supporting the Police, when any of these persons is acting in the performance of their duties and their death is the result of the commission or attempted commission of a felony or the concealment thereof.

(c) The death of a minor age twelve (12) years or less, when produced as a consequence of physical injury caused by the intentional abuse committed by the father, mother or person who holds custody [sic] temporary and/or physical custody of the child as set forth in §§ 444 et seq. of Title 8, known as the "Comprehensive Child Well-being and Protection Act".

All other murders shall be deemed as second-degree murders.

## **U.S. VIRGIN ISLANDS**

### ***V.I. CODE ANN. tit. 14, § 922 (2009). First and Second Degree Murder Defined***

(a) All murder which--

(1) is perpetrated by means of poison, lying in wait, torture, detonation of a bomb or by any other kind of willful, deliberate and premeditated killing;

(2) is committed in the perpetration or attempt to perpetrate arson, burglary, kidnapping, rape, robbery or mayhem, assault in the first degree, assault in the second degree, assault in the third degree and larceny; or

(3) is committed against (A) an official, law enforcement officer, or other officer or employee of the Government of the Virgin Islands while working with law enforcement officials in furtherance of a criminal investigation (i) while the victim is engaged in the performance of official duties; (ii) because of the performance of the victim's official duties; or (iii) because of the victim's status as a public servant; or (B) any person assisting a criminal investigation, while that assistance is being rendered and because it is

first degree murder;

is murder in the first degree.

(b) All other kinds of murder are murder in the second degree.