

~~(8)~~ (7) IT IS UNLIKELY THAT THE DEFENDANT WILL ENGAGE IN FURTHER CRIMINAL ACTIVITY THAT WOULD CONSTITUTE A CONTINUING THREAT TO SOCIETY.

(H) (1) IF THE COURT OR JURY FINDS THAT ONE OR MORE OF THESE MITIGATING CIRCUMSTANCES EXIST, IT SHALL DETERMINE WHETHER, BY A PREPONDERANCE OF THE EVIDENCE, THE MITIGATING CIRCUMSTANCES OUTWEIGH THE AGGRAVATING CIRCUMSTANCES.

(2) IF IT FINDS THAT THE MITIGATING CIRCUMSTANCES DO NOT OUTWEIGH THE AGGRAVATING CIRCUMSTANCES, THE SENTENCE SHALL BE DEATH.

(3) IF IT FINDS THAT THE MITIGATING CIRCUMSTANCES OUTWEIGH THE AGGRAVATING CIRCUMSTANCES, THE SENTENCE SHALL BE IMPRISONMENT FOR LIFE.

(I) THE DETERMINATION OF THE COURT OR JURY SHALL BE IN WRITING, AND, IF A JURY, SHALL BE UNANIMOUS AND SHALL BE SIGNED BY THE FOREMAN.

(J) THE DETERMINATION OF THE COURT OR JURY SHALL STATE, SPECIFICALLY:

(1) WHICH, IF ANY, AGGRAVATING CIRCUMSTANCES IT FINDS TO EXIST;

(2) WHICH, IF ANY, MITIGATING CIRCUMSTANCES IT FINDS TO EXIST;

(3) WHETHER ANY MITIGATING CIRCUMSTANCES FOUND UNDER SUBSECTION (G) OUTWEIGH THE AGGRAVATING CIRCUMSTANCES FOUND UNDER SUBSECTION (D);

(4) WHETHER THE AGGRAVATING CIRCUMSTANCES FOUND UNDER SUBSECTION (D) ARE NOT OUTWEIGHED BY MITIGATING CIRCUMSTANCES UNDER SUBSECTION (G); AND

(5) THE SENTENCE, DETERMINED IN ACCORDANCE WITH SUBSECTION (F) OR (H).

(K) (1) THE COURT SHALL IMPOSE THE SENTENCE DETERMINED BY THE JURY UNDER SUBSECTION (F) OR (H).

(2) IF THE JURY, WITHIN A REASONABLE TIME, IS NOT ABLE TO AGREE AS TO SENTENCE, THE COURT SHALL DISMISS THE JURY AND IMPOSE A SENTENCE OF IMPRISONMENT FOR LIFE.

(3) IF THE SENTENCING PROCEEDING IS CONDUCTED BEFORE A COURT WITHOUT A JURY, THE COURT SHALL IMPOSE THE SENTENCE DETERMINED UNDER SUBSECTION (F) OR (H).

(L) THE COURT OF APPEALS MAY ADOPT RULES OF PROCEDURE TO GOVERN THE CONDUCT OF A SENTENCING PROCEEDING CONDUCTED PURSUANT TO THIS SECTION, INCLUDING ANY FORMS TO BE USED BY THE COURT OR JURY IN MAKING ITS WRITTEN FINDINGS AND DETERMINATIONS OF SENTENCE.