

1 ~~[14-7029. Death penalty sentencing proceeding; mitigating circumstances.]<sup>1</sup>~~

2 ~~—— [If you unanimously find an aggravating circumstance, each of you must consider all~~  
3 ~~mitigating circumstances.]<sup>2</sup> [You have found an aggravating circumstance. You must now consider~~  
4 ~~any and all mitigating circumstances.]<sup>3</sup> A mitigating circumstance is any conduct, circumstance or~~  
5 ~~thing which would lead you individually or as a jury to decide not to impose the death penalty.~~  
6 ~~You are not required to reach unanimous agreement on the existence of any of the mitigating~~  
7 ~~circumstances. Instead, if any one of you, individually, believes that a mitigating circumstance~~  
8 ~~exists, you may consider it in the weighing process.~~

9 ~~—— [Each of you must consider any and all of the following mitigating circumstances]<sup>4,5</sup>~~

10 ~~—— [the defendant did not have any significant history of prior criminal activity;]~~

11 ~~—— [the defendant acted under duress or under the domination of another person;]~~

12 ~~—— [the defendant's capacity to appreciate the criminality of the defendant's conduct~~

13 ~~—— or to conform the defendant's conduct to the requirements of the law was impaired;]~~

14 ~~—— [the defendant was under the influence of mental or emotional disturbance;]~~

15 ~~—— [the victim was a willing participant in the defendant's conduct;]~~

16 ~~—— [the defendant acted under circumstances which tended to justify, excuse or reduce~~

17 ~~—— the crime;]~~

18 ~~—— [the defendant is likely to be rehabilitated;]~~

19 ~~—— [cooperation by the defendant with authorities;]~~

20 ~~—— [the defendant's age;]~~

21 ~~—— the circumstances of the offense which are mitigating; and anything else which may~~

22 ~~—— lead you to believe that the death penalty should not be imposed.~~



1 ~~each are not provided in the statute. Aggravating circumstances must be proven beyond a~~  
2 ~~reasonable doubt.~~

3 ~~—— It is not necessary for the jury to unanimously agree on any mitigating circumstance. See~~  
4 ~~*Clark v. Tansy*, 118 N.M. 486, 494, 882 P.2d 527, 535. See also *State v. Henderson*, 109 N.M.~~  
5 ~~655, 664, 789 P.2d 603, 612 (1990); *State v. Clark*, 1999 NMSC-035, P66, 128 N.M. 119, 990~~  
6 ~~P.2d 793.~~

7 ~~—— Section 31-20A-2 NMSA 1978 requires the trier of fact to consider the defendant and the~~  
8 ~~crime. The mitigating circumstances includes, but is not limited to the specific mitigating~~  
9 ~~circumstances identified in 31-20A-6 NMSA 1978.]~~

10 [Withdrawn by Supreme Court Order No. 21-8300-008.]