

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

376L0625

## HOUSE BILL NO. 1238

Introduced by: Representatives Haley, Gassman, Schafer, Sebert, and Wick and Senators Schoenbeck, Bartling, Broderick, Gant, Kelly, Moore, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the aggravating  
2 circumstances in death penalty cases.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-27A-1 be amended to read as follows:

5 23A-27A-1. Pursuant to §§ 23A-27A-2 to 23A-27A-6, inclusive, in all cases for which the  
6 death penalty may be authorized, the judge shall consider, or shall include in instructions to the  
7 jury for it to consider, any mitigating circumstances and any of the following aggravating  
8 circumstances which may be supported by the evidence:

9 (1) ~~The offense was committed by a person with a prior record of conviction for a Class~~  
10 ~~A or Class B felony, or the offense of murder was committed by a person who has~~  
11 ~~a felony conviction for a crime of violence as defined in subdivision 22-1-2(9);~~

12 ~~(2) The defendant by the defendant's act knowingly created a great risk of death to more~~  
13 ~~than one person in a public place by means of a weapon or device which would~~  
14 ~~normally be hazardous to the lives of more than one person;~~

15 ~~(3) The defendant committed the offense for the benefit of the defendant or another, for~~



- 1           ~~the purpose of receiving money or any other thing of monetary value;~~
- 2    ~~(4)~~—The defendant committed the offense on a judicial officer, former judicial officer,  
3           prosecutor, or former prosecutor while such prosecutor, former prosecutor, judicial  
4           officer, or former judicial officer was engaged in the performance of such person's  
5           official duties or where a major part of the motivation for the offense came from the  
6           official actions of such judicial officer, former judicial officer, prosecutor, or former  
7           prosecutor;
- 8    ~~(5)~~—The defendant caused or directed another to commit murder or committed murder as  
9           an agent or employee of another person;
- 10    ~~(6)~~(2) The offense was outrageously or wantonly vile, horrible, or inhuman in that it  
11           involved torture, depravity of mind, or an aggravated battery to the victim. Any  
12           murder is wantonly vile, horrible, and inhuman if the victim is less than thirteen years  
13           of age; or
- 14    ~~(7)~~(3) The offense was committed against a law enforcement officer, employee of a  
15           corrections institution, or firefighter while engaged in the performance of such  
16           person's official duties;
- 17    ~~(8)~~—The offense was committed by a person in, or who has escaped from, the lawful  
18           custody of a law enforcement officer or place of lawful confinement;
- 19    ~~(9)~~—The offense was committed for the purpose of avoiding, interfering with, or  
20           preventing a lawful arrest or custody in a place of lawful confinement, of the  
21           defendant or another; or
- 22    ~~(10)~~—The offense was committed in the course of manufacturing, distributing, or  
23           dispensing substances listed in Schedules I and II in violation of § 22-42-2.