

**§ 15A-1340.19B. Penalty determination.**

- (a) In determining a sentence under this Part, the court shall do one of the following:
- (1) If the sole basis for conviction of a count or each count of first degree murder was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.
  - (2) If the court does not sentence the defendant pursuant to subdivision (1) of this subsection, then the court shall conduct a hearing to determine whether the defendant should be sentenced to life imprisonment without parole, as set forth in G.S. 14-17, or a lesser sentence of life imprisonment with parole.
- (b) The hearing under subdivision (2) of subsection (a) of this section shall be conducted by the trial judge as soon as practicable after the guilty verdict is returned. The State and the defendant shall not be required to resubmit evidence presented during the guilt determination phase of the case. Evidence, including evidence in rebuttal, may be presented as to any matter that the court deems relevant to sentencing, and any evidence which the court deems to have probative value may be received.
- (c) The defendant or the defendant's counsel may submit mitigating circumstances to the court, including, but not limited to, the following factors:
- (1) Age at the time of the offense.
  - (2) Immaturity.
  - (3) Ability to appreciate the risks and consequences of the conduct.
  - (4) Intellectual capacity.
  - (5) Prior record.
  - (6) Mental health.
  - (7) Familial or peer pressure exerted upon the defendant.
  - (8) Likelihood that the defendant would benefit from rehabilitation in confinement.
  - (9) Any other mitigating factor or circumstance.
- (d) The State and the defendant or the defendant's counsel shall be permitted to present argument for or against the sentence of life imprisonment with parole. The defendant or the defendant's counsel shall have the right to the last argument.
- (e) The provisions of Article 58 of Chapter 15A of the General Statutes apply to proceedings under this Part. (2012-148, s. 1.)