**PRE-PROOF INSTRUCTIONS**

**ICJI 1701 Nature of Hearing**

The defendant in this case has been convicted of the crime of First-Degree Murder. We will now have a sentencing phase of the trial regarding that offense.

Additional evidence may be presented during the sentencing phase. You may also consider the evidence presented during the trial.

Before the death penalty can be considered, the State must prove at least one statutory aggravating circumstance beyond a reasonable doubt. If you unanimously decide that the State has so proven [the] [one or more] statutory aggravating circumstance[s], then you must decide whether the imposition of the death penalty would be unjust by weighing all mitigating circumstances against each statutory aggravating circumstance that has been proven.

[At a separate proceeding, the court will sentence the defendant for the other offense[s] of which you found [him] [her] guilty.]

Comment

I.C. § 19-2515. This instruction should be given at the beginning of the sentencing phase before the presentation of evidence. Use the applicable bracketed material.

The “beyond a reasonable doubt” standard applies to the existence of aggravating circumstances, not to the process of weighing them against the mitigating circumstances, which must occur before sentence is imposed. *State v. Sivak*, 105 Idaho 900, 674 P.2d 396 (1983). All relevant mitigating factors may be considered. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991), *overruled on other grounds by* *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991).