

SECOND REGULAR SESSION

HOUSE BILL NO. 2821

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HICKS.

6447H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 565.032, RSMo, and to enact in lieu thereof one new section relating to statutory aggravating circumstances in first degree murder cases.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 565.032, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 565.032, to read as follows:

565.032. 1. In all cases of murder in the first degree for which the death penalty is authorized, the judge in a jury-waived trial shall consider, or he shall include in his instructions to the jury for it to consider:

(1) Whether a statutory aggravating circumstance or circumstances enumerated in subsection 2 of this section is established by the evidence beyond a reasonable doubt; and

(2) If a statutory aggravating circumstance or circumstances is proven beyond a reasonable doubt, whether the evidence as a whole justifies a sentence of death or a sentence of life imprisonment without eligibility for probation, parole, or release except by act of the governor. In determining the issues enumerated in [subdivisions] **this subdivision and subdivision (1) [and (2)]** of this subsection, the trier shall consider all evidence which it finds to be in aggravation or mitigation of punishment, including evidence received during the first stage of the trial and evidence supporting any of the statutory aggravating or mitigating circumstances set out in subsections 2 and 3 of this section. If the trier is a jury, it shall not be instructed upon any specific evidence which may be in aggravation or mitigation of punishment, but shall be instructed that each juror shall consider any evidence which he considers to be aggravating or mitigating.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 2. Statutory aggravating circumstances for a murder in the first degree offense shall be
18 limited to the following:

19 (1) The offense was committed by a person with a prior record of conviction for murder
20 in the first degree, or the offense was committed by a person who has one or more serious
21 assaultive criminal convictions;

22 (2) The murder in the first degree offense was committed while the offender was
23 engaged in the commission or attempted commission of another unlawful homicide;

24 (3) The offender by his act of murder in the first degree knowingly created a great risk
25 of death to more than one person by means of a weapon or device which would normally be
26 hazardous to the lives of more than one person;

27 (4) The offender committed the offense of murder in the first degree for himself or
28 another, for the purpose of receiving money or any other thing of monetary value from the victim
29 of the murder or another;

30 (5) The murder in the first degree was committed against a judicial officer, former
31 judicial officer, prosecuting attorney or former prosecuting attorney, circuit attorney or former
32 circuit attorney, assistant prosecuting attorney or former assistant prosecuting attorney, assistant
33 circuit attorney or former assistant circuit attorney, peace officer or former peace officer, elected
34 official or former elected official during or because of the exercise of his official duty;

35 (6) The offender caused or directed another to commit murder in the first degree or
36 committed murder in the first degree as an agent or employee of another person;

37 (7) The murder in the first degree was outrageously or wantonly vile, horrible or
38 inhuman in that it involved torture, or depravity of mind;

39 (8) The murder in the first degree was committed against any peace officer, or fireman
40 while engaged in the performance of his official duty;

41 (9) The murder in the first degree was committed by a person in, or who has escaped
42 from, the lawful custody of a peace officer or place of lawful confinement;

43 (10) The murder in the first degree was committed for the purpose of avoiding,
44 interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of
45 himself or another;

46 (11) The murder in the first degree was committed while the defendant was engaged in
47 the perpetration or was aiding or encouraging another person to perpetrate or attempt to
48 perpetrate a felony of any degree of rape, sodomy, burglary, robbery, kidnapping, or any felony
49 offense in chapter 195;

50 (12) **The murder in the first degree was committed while the defendant was**
51 **engaged in the perpetration or was aiding or encouraging another person to perpetrate or**
52 **attempt to perpetrate an offense of trafficking for the purpose of sexual exploitation, sexual**

53 **trafficking of a child until December 31, 2016, sexual trafficking of a child under age**
54 **twelve until December 31, 2016, or trafficking of a child in the first or second degree**
55 **beginning January 1, 2017;**

56 **(13)** The murdered individual was a witness or potential witness in any past or pending
57 investigation or past or pending prosecution, and was killed as a result of his status as a witness
58 or potential witness;

59 **[(13)] (14)** The murdered individual was an employee of an institution or facility of the
60 department of corrections of this state or local correction agency and was killed in the course of
61 performing his official duties, or the murdered individual was an inmate of such institution or
62 facility;

63 **[(14)] (15)** The murdered individual was killed as a result of the hijacking of an airplane,
64 train, ship, bus or other public conveyance;

65 **[(15)] (16)** The murder was committed for the purpose of concealing or attempting to
66 conceal any felony offense defined in chapter 195;

67 **[(16)] (17)** The murder was committed for the purpose of causing or attempting to cause
68 a person to refrain from initiating or aiding in the prosecution of a felony offense defined in
69 chapter 195;

70 **[(17)] (18)** The murder was committed during the commission of a crime which is part
71 of a pattern of criminal street gang activity as defined in section 578.421;

72 **(19) The murder was committed:**

73 **(a) By means of a destructive device, bomb, explosive, incendiary device, or similar**
74 **device which was planted, hidden, or concealed in any place, area, dwelling, building, or**
75 **structure, or was mailed or delivered; or**

76 **(b) By means of a weapon of mass destruction. As used in this paragraph, "weapon**
77 **of mass destruction" means:**

78 **a. Any item or instrumentality that is designed or intended to cause widespread**
79 **death or serious bodily injury to multiple victims;**

80 **b. Any item or instrumentality that is designed or intended to cause death or**
81 **serious bodily injury through the release, dissemination, or impact of toxic or poisonous**
82 **chemicals, or their precursors;**

83 **c. Any disease organism, including any biological agent, toxin, or vector that is used**
84 **or intended to be used as a weapon;**

85 **d. Any item or instrumentality that is designed to release radiation or radioactivity**
86 **at a level dangerous to human life and that is used or intended to be used as a weapon; or**

87 **e. Any substance or material or combination that has been prepared or altered for**
88 **use in the creation of a weapon described in subparagraphs a. to d. of this paragraph.**

89 **"Weapon of mass destruction" shall not include firearms or rifle, pistol, or shotgun**
90 **ammunition, reloading components, or muzzleloading equipment;**

91 **(20) The murder was committed by means of the administration of poison or of any**
92 **lethal substance or of any substance administered in a lethal amount, dosage, or quantity;**

93 **(21) The victim was a person held or otherwise detained as a shield, hostage, or for**
94 **ransom;**

95 **(22) The person committing the murder dismembers, mutilates, or disfigures the**
96 **victim's body, whether before or after death, in a manner demonstrating depravity of**
97 **mind; or**

98 **(23) The victim at the time of death:**

99 **(a) Was less than fourteen years of age; and**

100 **(b) Was not an unborn child.**

101 3. Statutory mitigating circumstances shall include the following:

102 (1) The defendant has no significant history of prior criminal activity;

103 (2) The murder in the first degree was committed while the defendant was under the
104 influence of extreme mental or emotional disturbance;

105 (3) The victim was a participant in the defendant's conduct or consented to the act;

106 (4) The defendant was an accomplice in the murder in the first degree committed by
107 another person and his participation was relatively minor;

108 (5) The defendant acted under extreme duress or under the substantial domination of
109 another person;

110 (6) The capacity of the defendant to appreciate the criminality of his conduct or to
111 conform his conduct to the requirements of law was substantially impaired;

112 (7) The age of the defendant at the time of the crime.

113 **4. (1) (a) Within sixty days after arraignment of the defendant, the prosecuting**
114 **attorney may file notice of intent to seek the death penalty. Such notice shall be served on**
115 **the defendant or the defendant's attorney and filed with the court.**

116 **(b) Notice of intent to seek the death penalty may be served and filed more than**
117 **sixty days after the arraignment upon written stipulation of the parties or upon a finding**
118 **by the court of good cause.**

119 **(2) Without the consent of the prosecuting attorney, the court shall not accept a**
120 **plea of guilty for first degree murder during the period in which the prosecuting attorney**
121 **may file a notice of intent to seek the death penalty.**

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