

SECOND REGULAR SESSION

HOUSE BILL NO. 2394

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MACKEY.

3349H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 565.032, RSMo, and to enact in lieu thereof one new section relating to assessing punishment in first degree murder cases for which the death penalty is authorized.

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Section A. Section 565.032, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 565.032, to read as follows: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

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11 In determining the issues enumerated in subdivisions (1) and (2) of this subsection, the trier shall
12 consider all evidence which it finds to be in aggravation or mitigation of punishment, including
13 evidence received during the first stage of the trial and evidence supporting any of the statutory
14 aggravating or mitigating circumstances set out in subsections 2 and 3 of this section. If the trier
15 is a jury, it shall not be instructed upon any specific evidence which may be in aggravation or

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.

16 mitigation of punishment, but shall be instructed that each juror shall consider any evidence
17 which he or she considers to be aggravating or mitigating.

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

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

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

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

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

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

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

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

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

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

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

47 (11) The murder in the first degree was committed while the defendant was engaged in
48 the perpetration or was aiding or encouraging another person to perpetrate or attempt to
49 perpetrate a felony of any degree of rape, sodomy, burglary, robbery, kidnapping, or any felony
50 offense in chapter 195 or 579;

51 (12) The murdered individual was a witness or potential witness in any past or pending
52 investigation or past or pending prosecution, and was killed as a result of his or her status as a
53 witness or potential witness;

54 (13) The murdered individual was an employee of an institution or facility of the
55 department of corrections of this state or local correction agency and was killed in the course of
56 performing his or her official duties, or the murdered individual was an inmate of such institution
57 or facility;

58 (14) The murdered individual was killed as a result of the hijacking of an airplane, train,
59 ship, bus or other public conveyance;

60 (15) The murder was committed for the purpose of concealing or attempting to conceal
61 any felony offense defined in chapter 195 or 579;

62 (16) The murder was committed for the purpose of causing or attempting to cause a
63 person to refrain from initiating or aiding in the prosecution of a felony offense defined in
64 chapter 195 or 579;

65 (17) The murder was committed during the commission of an offense which is part of
66 a pattern of criminal street gang activity as defined in section 578.421.

67 3. Statutory mitigating circumstances shall include the following:

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

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

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

72 (4) The defendant was an accomplice in the murder in the first degree committed by
73 another person and his or her participation was relatively minor;

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

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

78 (7) The age of the defendant at the time of the offense.

79 **4. (1) If the evidence as a whole justifies a sentence of death under the provisions**
80 **of this section, the judge, in a jury-waived trial, or the jury shall consider whether the**
81 **person's continued life would constitute a threat to another or society. If such person's**
82 **continued life would constitute a threat to another or society, the court may sentence the**
83 **person to death. If, however, the judge or the jury determines that the person's life would**
84 **not constitute a threat to another or society, the person shall not be sentenced to death.**

85 **(2) When determining if a person is a threat to another or society, the judge or the**
86 **jury may consider any evidence, including evidence received during the first stage of the**
87 **trial.**

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