

FIRST REGULAR SESSION

# HOUSE BILL NO. 676

## 101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE COLEMAN (97).

1331H.011

DANA RADEMAN MILLER, Chief Clerk

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### 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.

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Section A. Section 565.032, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 565.032, to read as follows: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

In determining the issues enumerated in subdivisions (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 or she 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.

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, **regardless**  
25 **of whether the victim was previously identified;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

68 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

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

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