

FIRST REGULAR SESSION

SENATE BILL NO. 409

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Read 1st time February 27, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

0050S.011

AN ACT

To repeal sections 547.035, 547.037, 565.020, and 565.032, RSMo, and to enact in lieu thereof four new sections relating to first degree murder.

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

Section A. Sections 547.035, 547.037, 565.020, and 565.032, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 547.035, 547.037, 565.020, and 565.032, to read as follows:

547.035. 1. A person in the custody of the department of corrections
2 claiming that forensic DNA testing will demonstrate the person's innocence of the
3 crime for which the person is in custody may file a postconviction motion in the
4 sentencing court seeking such testing. **A person who has been sentenced to**
5 **death may file such a motion if the testing will demonstrate the**
6 **person's innocence as it relates to any aggravating factor of the crime**
7 **that led to the person being sentenced to death even if the person**
8 **cannot claim that he or she is innocent of first degree murder.** The
9 procedure to be followed for such motions is governed by the rules of civil
10 procedure insofar as applicable.

11 2. The motion must allege facts under oath demonstrating that:

12 (1) There is evidence upon which DNA testing can be conducted; and

13 (2) [The evidence was secured in relation to the crime; and

14 (3)] **There is a reasonable likelihood that additional testing**
15 **would produce more probative results, or** the evidence was not previously
16 tested by the movant because:

17 (a) The technology for the testing was not reasonably available to the
18 movant at the time of the trial;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (b) Neither the movant nor his or her trial counsel was aware of the
20 existence of the evidence at the time of trial; or

21 (c) The evidence was otherwise unavailable to both the movant and
22 movant's trial counsel at the time of trial; and

23 [(4)] (3) Identity was an issue in the trial; and

24 [(5)] (4) A reasonable probability exists that the movant would not have
25 been convicted if exculpatory results had been obtained through the requested
26 DNA testing, **or if the movant has been sentenced to death, that such**
27 **person would not have been sentenced to death.**

28 3. Movant shall file the motion and two copies thereof with the clerk of
29 the sentencing court. The clerk shall file the motion in the original criminal case
30 and shall immediately deliver a copy of the motion to the prosecutor.

31 4. The court shall issue to the prosecutor an order to show cause why the
32 motion should not be granted unless:

33 (1) It appears from the motion that the movant is not entitled to relief; or

34 (2) The court finds that the files and records of the case conclusively show
35 that the movant is not entitled to relief.

36 5. Upon the issuance of the order to show cause, the clerk shall notify the
37 court reporter to prepare and file the transcript of the trial or the movant's guilty
38 plea and sentencing hearing if the transcript has not been prepared or filed.

39 6. If the court finds that the motion and the files and records of the case
40 conclusively show that the movant is not entitled to relief, a hearing shall not be
41 held. If a hearing is ordered, counsel shall be appointed to represent the movant
42 if the movant is indigent. The hearing shall be on the record. Movant need not
43 be present at the hearing. The court may order that testimony of the movant
44 shall be received by deposition. The movant shall have the burden of proving the
45 allegations of the motion by a preponderance of the evidence.

46 7. The court shall order appropriate testing if the court finds:

47 (1) A reasonable probability exists that the movant would not have been
48 convicted **or sentenced to death** if exculpatory results had been obtained
49 through the requested DNA testing; and

50 (2) That movant is entitled to relief. Such testing shall be conducted by
51 a facility mutually agreed upon by the movant and by the state and approved by
52 the court. If the parties are unable to agree, the court shall designate the testing
53 facility. The court shall impose reasonable conditions on the testing to protect
54 the state's interests in the integrity of the evidence and the testing process.

55 8. The court shall issue findings of fact and conclusions of law whether or
56 not a hearing is held.

 547.037. 1. If testing ordered pursuant to section 547.035 demonstrates
2 a person's innocence of the crime for which the person is in custody **or**
3 **demonstrates a person's innocence regarding the aggravating**
4 **circumstance or circumstances relied on by the trier of fact when**
5 **sentencing the offender to death**, a motion for release **or motion for a new**
6 **sentence** may be filed in the sentencing court.

7 2. The court shall issue to the prosecutor an order to show cause why the
8 motion should not be granted. The prosecutor shall file a response consenting to
9 or opposing the motion.

10 3. If the prosecutor consents to the motion and if the court finds that such
11 testing demonstrates the movant's innocence of the crime for which he or she is
12 in custody, the court shall order the movant's release from the sentence for the
13 crime for which testing occurred. **If the prosecutor consents to the motion**
14 **and the court finds that the testing demonstrates the person's**
15 **innocence as it relates to the aggravating circumstance or**
16 **circumstances relied on by the trier of fact when sentencing the**
17 **offender to death, the court shall order the person to serve a sentence**
18 **of imprisonment for life without eligibility for probation, parole, or**
19 **release except by act of the governor.**

20 4. If the prosecutor files a response opposing the movant's release, the
21 court shall conduct a hearing. If a hearing is ordered, the public defender shall
22 be appointed to represent the movant if the movant is indigent. The hearing
23 shall be on the record. The movant shall have the burden of proving the
24 allegations of the motion by a preponderance of the evidence.

25 5. If the court finds that the testing ordered pursuant to section 547.035
26 demonstrates the movant's innocence of the crime for which he or she is in
27 custody, the court shall order the movant's release from the sentence for the
28 crime for which the testing occurred. **If the court finds that the testing**
29 **demonstrates the person's innocence as it relates to the aggravating**
30 **circumstance or circumstances relied on by the trier of fact when**
31 **sentencing the offender to death, the court shall order the person to**
32 **serve a sentence of imprisonment for life without eligibility for**
33 **probation, parole, or release except by act of the governor.** Otherwise,
34 relief shall be denied the movant.

35 6. The court shall issue findings of fact and conclusions of law whether or
36 not a hearing is held. An appeal may be taken from the court's findings and
37 conclusions as in other civil cases.

565.020. 1. A person commits the crime of murder in the first degree if
2 **[he] such person** knowingly causes the death of another person after
3 deliberation upon the matter.

4 2. Murder in the first degree is a class A felony[, and the punishment
5 shall be either death or imprisonment for life without eligibility for probation or
6 parole, or release except by act of the governor; except that, if a person has not
7 reached his sixteenth birthday at the time of the commission of the crime, the
8 punishment shall be imprisonment for life without eligibility for probation or
9 parole, or release except by act of the governor]. **The punishment for a
10 person eighteen years of age or older who engaged in the act that
11 caused the victim's death, directed or controlled another person to
12 commit the murder, or entered into an agreement with another person
13 for that person to commit the murder shall be either death or
14 imprisonment for life without eligibility for probation, parole, or
15 release except by act of the governor. The punishment for a person
16 who has not reached his or her eighteenth birthday at the time of the
17 commission of the crime, regardless of the circumstances of the first
18 degree murder, shall be life without eligibility for probation, parole, or
19 release until the person has served a minimum prison term of twenty-
20 five years. The punishment for a person eighteen years of age or older
21 who has been found guilty of first degree murder, but who did not
22 engage in the act that caused the death, or did not direct or control
23 another person, or enter into an agreement with another person, to
24 commit the murder shall be life without eligibility for probation,
25 parole, or release except by act of the governor.**

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

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

7 (2) If a statutory aggravating circumstance or circumstances is proven
8 beyond a reasonable doubt, whether the evidence as a whole justifies a sentence

9 of death or a sentence of life imprisonment without eligibility for probation,
10 parole, or release except by act of the governor. In determining the issues
11 enumerated in subdivisions (1) and (2) of this subsection, the trier shall consider
12 all evidence which it finds to be in aggravation or mitigation of punishment,
13 including evidence received during the first stage of the trial and evidence
14 supporting any of the statutory aggravating or mitigating circumstances set out
15 in subsections 2 and 3 of this section. If the trier is a jury, it shall not be
16 instructed upon any specific evidence which may be in aggravation [or mitigation]
17 of punishment, but shall be instructed that each juror shall consider any evidence
18 which [he] **such person** considers to be aggravating [or mitigating]. **The court**
19 **shall instruct the jury on any specific mitigating circumstance offered**
20 **by the defendant that is supported by evidence regardless of whether**
21 **the circumstance is listed in subsection 3 of this section.**

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

24 (1) The offense was committed by a person with a prior record of
25 conviction for murder in the first degree[, or the offense was committed by a
26 person who has one or more serious assaultive criminal convictions] **or was**
27 **committed while the offender was subject to a term of life**
28 **imprisonment without eligibility for probation, parole, or conditional**
29 **release;**

30 (2) [The murder in the first degree offense was committed while the
31 offender was engaged in the commission or attempted commission of another
32 unlawful homicide;

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

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

39 (5) The murder in the first degree was committed against a judicial
40 officer, former judicial officer, prosecuting attorney or former prosecuting
41 attorney, circuit attorney or former circuit attorney, assistant prosecuting
42 attorney or former assistant prosecuting attorney, assistant circuit attorney or
43 former assistant circuit attorney, peace officer or former peace officer, elected
44 official or former elected official during or because of the exercise of his official

45 duty;

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

49 (7) The murder in the first degree [was outrageously or wantonly vile,
50 horrible or inhuman in that it] involved [torture, or depravity of mind] **the**
51 **infliction of severe physical pain during or immediately prior to the**
52 **murder for the purpose of making the victim suffer before dying;**

53 [(8)] **(3)** The murder in the first degree was committed against any peace
54 officer, **employee of a correctional institution or facility,** or
55 **[fireman] firefighter** while engaged in the performance of [his] **such person's**
56 official duty;

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

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

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

67 (12) The murdered individual was a witness or potential witness in any
68 past or pending investigation or past or pending prosecution, and was killed as
69 a result of his status as a witness or potential witness;

70 (13) The murdered individual was an employee of an institution or facility
71 of the department of corrections of this state or local correction agency and was
72 killed in the course of performing his official duties, or the murdered individual
73 was an inmate of such institution or facility;

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

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

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

81 (17) The murder was committed during the commission of a crime which
82 is part of a pattern of criminal street gang activity as defined in section 578.421.]

83 **(4) The murder was committed in furtherance of a purposeful**
84 **attack on the government of the state or any of its political**
85 **subdivisions;**

86 **(5) The murder was committed for the purpose of interfering**
87 **with or retaliating against a pending criminal investigation or**
88 **proceeding; or**

89 **(6) The offender committed murder in the first degree against**
90 **two or more victims.**

91 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

99 (5)] The defendant acted under extreme duress or under the substantial
100 domination of another person;

101 [(6)] **(5)** The capacity of the defendant to appreciate the criminality of his
102 conduct or to conform his conduct to the requirements of law was substantially
103 impaired;

104 [(7)] **(6)** The age of the defendant at the time of the crime.

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