

SECOND REGULAR SESSION

SENATE BILL NO. 775

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Pre-filed December 3, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5122S.011

AN ACT

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

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Section A. Section 565.032, RSMo, is repealed and one new section
2 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
2 penalty is authorized, the judge in a jury-waived trial shall consider, or he shall
3 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 considers to be aggravating or mitigating.

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

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

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

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

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

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

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

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

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

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

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

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

57 **579;**

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

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

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

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

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

72 (17) The murder was committed during the commission of a crime which
73 is part of a pattern of criminal street gang activity as defined in section 578.421;

74 **(18) The murder was committed as an act of terrorism in that it**
75 **was committed for the purpose of, or in a manner of, intimidating or**
76 **coercing a civilian population, influencing the policy of a government**
77 **by intimidation or coercion, or affecting the conduct of a government.**

78 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

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