

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 804,  
2 Page 7, Section 304.351, Line 77, by inserting after all of said section and line the following:

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4 "565.032. 1. In all cases of murder in the first degree for which the death penalty is  
5 authorized, the judge in a jury-waived trial shall consider, or he shall include in his instructions to  
6 the jury for it to consider:

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

9 (2) If a statutory aggravating circumstance or circumstances is proven beyond a reasonable  
10 doubt, whether the evidence as a whole justifies a sentence of death or a sentence of life  
11 imprisonment without eligibility for probation, parole, or release except by act of the governor. In  
12 determining the issues enumerated in [subdivisions] this subdivision and subdivision (1) [and (2)] of  
13 this subsection, the trier shall consider all evidence which it finds to be in aggravation or mitigation  
14 of punishment, including evidence received during the first stage of the trial and evidence  
15 supporting any of the statutory aggravating or mitigating circumstances set out in subsections 2 and  
16 3 of this section. If the trier is a jury, it shall not be instructed upon any specific evidence which  
17 may be in aggravation or mitigation of punishment, but shall be instructed that each juror shall  
18 consider any evidence which he considers to be aggravating or mitigating.

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

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

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

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

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

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

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

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

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

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

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

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

(12) The murder in the first degree was committed while the defendant was engaged in the perpetration or was aiding or encouraging another person to perpetrate or attempt to perpetrate an offense of trafficking for the purpose of sexual exploitation, sexual trafficking of a child until December 31, 2016, sexual trafficking of a child under age twelve until December 31, 2016, or trafficking of a child in the first or second degree beginning January 1, 2017;

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

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

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

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

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

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

(19) The murder was committed:

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

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

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

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

c. Any disease organism, including any biological agent, toxin, or vector that is used or

1 intended to be used as a weapon;

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

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

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

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

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

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

14 (23) The victim at the time of death:

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

16 (b) Was not an unborn child.

17 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

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

29 4. (1) (a) Within sixty days after arraignment of the defendant, the prosecuting attorney  
30 may file notice of intent to seek the death penalty. Such notice shall be served on the defendant or  
31 the defendant's attorney and filed with the court.

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

35 (2) Without the consent of the prosecuting attorney, the court shall not accept a plea of  
36 guilty for first degree murder during the period in which the prosecuting attorney may file a notice  
37 of intent to seek the death penalty."; and

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39 Further amend said bill by amending the title, enacting clause, and intersectional references  
40 accordingly.