

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Substitute No. 2 for Senate Committee Substitute
2 for Senate Bill No. 523, Page 93, Section 565.002, Line 68, by inserting after said line the
3 following:
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5 "565.032. 1. In all cases of murder in the first degree for which the death penalty is
6 authorized, the judge in a jury-waived trial shall consider, or shall include in his or her instructions
7 to the jury for it to consider:

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

10 (2) If a statutory aggravating circumstance or circumstances is proven beyond a reasonable
11 doubt, whether the evidence as a whole justifies a sentence of death or a sentence of life
12 imprisonment without eligibility for probation, parole, or release except by act of the governor.
13

14 In determining the issues enumerated in subdivisions (1) and (2) of this subsection, the trier shall
15 consider all evidence which it finds to be in aggravation or mitigation of punishment, including
16 evidence received during the first stage of the trial and evidence supporting any of the statutory
17 aggravating or mitigating circumstances set out in subsections 2 and 3 of this section. If the trier is
18 a jury, it shall not be instructed upon any specific evidence which may be in aggravation or
19 mitigation of punishment, but shall be instructed that each juror shall consider any evidence which
20 he or she considers to be aggravating or mitigating.

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

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

26 (2) The murder in the first degree offense was committed while the offender was engaged in
27 the commission or attempted commission of another unlawful homicide, regardless of whether the
28 victim was previously identified;

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

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

35 (5) The murder in the first degree was committed against a judicial officer, former judicial
36 officer, prosecuting attorney or former prosecuting attorney, circuit attorney or former circuit

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1 attorney, assistant prosecuting attorney or former assistant prosecuting attorney, assistant circuit
2 attorney or former assistant circuit attorney, peace officer or former peace officer, elected official or
3 former elected official during or because of the exercise of his official duty;

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

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

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

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

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

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

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

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

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

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

29 (16) The murder was committed for the purpose of causing or attempting to cause a person
30 to refrain from initiating or aiding in the prosecution of a felony offense defined in chapter 195 or
31 579;

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

34 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

45 (7) The age of the defendant at the time of the offense."; and

46
47 Further amend said bill by amending the title, enacting clause, and intersectional references
48 accordingly.