

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 590
98TH GENERAL ASSEMBLY

4323H.06C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 565.020, 565.030, 565.032, and 565.040, RSMo, and to enact in lieu thereof five new sections relating to crime, with penalty provisions, an emergency clause for certain sections, and an effective date for a certain section.

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

Section A. Sections 565.020, 565.030, 565.032, and 565.040, RSMo, are repealed and
2 five new sections enacted in lieu thereof, to be known as sections 565.020, 565.030, 565.032,
3 565.033, and 565.040, to read as follows:

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

3 2. **The offense of** murder in the first degree is a class A felony, and, **if a person is**
4 **eighteen years of age or older at the time of the offense**, the punishment shall be either death
5 or imprisonment for life without eligibility for probation or parole, or release except by act of
6 the governor[; except that,] . If a person has not reached his [sixteenth] **or her eighteenth**
7 birthday at the time of the commission of the [crime] **offense**, the punishment shall be
8 [imprisonment for life without eligibility for probation or parole, or release except by act of the
9 governor] **as provided under section 565.033.**

565.030. 1. Where murder in the first degree is charged but not submitted or where the
2 state waives the death penalty, the submission to the trier and all subsequent proceedings in the
3 case shall proceed as in all other criminal cases [with a single stage trial in which guilt and
4 punishment are submitted together].

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.

5 2. Where murder in the first degree is submitted to the trier without a waiver of the death
6 penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier shall
7 decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of
8 punishment shall not be submitted to the trier at the first stage. If an offense is charged other
9 than murder in the first degree in a count together with a count of murder in the first degree, the
10 trial judge shall assess punishment on any such offense according to law, after the defendant is
11 found guilty of such offense and after he finds the defendant to be a prior offender pursuant to
12 chapter 558.

13 3. If murder in the first degree is submitted and the death penalty was not waived but the
14 trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed [at
15 which the only issue shall be the punishment to be assessed and declared. No further evidence
16 shall be received. If the trier is a jury it shall be instructed on the law] **as in all other criminal**
17 **cases**. The attorneys may then argue as in other criminal cases the issue of punishment, after
18 which the trier shall assess and declare the punishment as in all other criminal cases.

19 4. If the trier at the first stage of a trial where the death penalty was not waived finds the
20 defendant guilty of murder in the first degree, a second stage of the trial shall proceed at which
21 the only issue shall be the punishment to be assessed and declared. Evidence in aggravation and
22 mitigation of punishment, including but not limited to evidence supporting any of the
23 aggravating or mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be
24 presented subject to the rules of evidence at criminal trials. Such evidence may include, within
25 the discretion of the court, evidence concerning the murder victim and the impact of the [crime]
26 **offense** upon the family of the victim and others. Rebuttal and surrebuttal evidence may be
27 presented. The state shall be the first to proceed. If the trier is a jury it shall be instructed on the
28 law. The attorneys may then argue the issue of punishment to the jury, and the state shall have
29 the right to open and close the argument. The trier shall assess and declare the punishment at life
30 imprisonment without eligibility for probation, parole, or release except by act of the governor:

31 (1) If the trier finds by a preponderance of the evidence that the defendant is
32 intellectually disabled; or

33 (2) If the trier does not find beyond a reasonable doubt at least one of the statutory
34 aggravating circumstances set out in subsection 2 of section 565.032; or

35 (3) If the trier concludes that there is evidence in mitigation of punishment, including
36 but not limited to evidence supporting the statutory mitigating circumstances listed in subsection
37 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment
38 found by the trier; or

39 (4) If the trier decides under all of the circumstances not to assess and declare the
40 punishment at death. If the trier is a jury it shall be so instructed.

41

42 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set out
43 in writing the aggravating circumstance or circumstances listed in subsection 2 of section
44 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed
45 before the case is submitted that if it is unable to decide or agree upon the punishment the court
46 shall assess and declare the punishment at life imprisonment without eligibility for probation,
47 parole, or release except by act of the governor or death. The court shall follow the same
48 procedure as set out in this section whenever it is required to determine punishment for murder
49 in the first degree.

50 5. Upon written agreement of the parties and with leave of the court, the issue of the
51 defendant's intellectual disability may be taken up by the court and decided prior to trial without
52 prejudicing the defendant's right to have the issue submitted to the trier of fact as provided in
53 subsection 4 of this section.

54 6. As used in this section, the terms "intellectual disability" or "intellectually disabled"
55 refer to a condition involving substantial limitations in general functioning characterized by
56 significantly subaverage intellectual functioning with continual extensive related deficits and
57 limitations in two or more adaptive behaviors such as communication, self-care, home living,
58 social skills, community use, self-direction, health and safety, functional academics, leisure and
59 work, which conditions are manifested and documented before eighteen years of age.

60 7. The provisions of this section shall only govern offenses committed on or after August
61 28, 2001.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (12) The murdered individual was a witness or potential witness in any past or pending
50 investigation or past or pending prosecution, and was killed as a result of his **or her** status as a
51 witness or potential witness;

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

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

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

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

63 (17) The murder was committed during the commission of [a crime] **an offense** which
64 is part of a pattern of criminal street gang activity as defined in section 578.421.

65 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

76 (7) The age of the defendant at the time of the [crime] **offense**.

**565.033. 1. A person found guilty of murder in the first degree who was under the
2 age of eighteen at the time of the commission of the offense shall be sentenced as follows:**

3 **(1) A person who at the time of the commission of the offense was sixteen years of**
4 **age or older shall be sentenced to a term of imprisonment for life without eligibility for**
5 **probation, parole, or release, or a term of imprisonment, the minimum of which shall be**
6 **at least fifty years; and**

7 **(2) A person who at the time of the commission of the offense was under sixteen**
8 **years of age shall be sentenced to a term of imprisonment for life without eligibility for**
9 **probation, parole, or release, or a term of imprisonment, the minimum of which shall be**
10 **at least thirty-five years.**

11 **2. If the prosecuting or circuit attorney intends to seek a punishment of**
12 **imprisonment for life without eligibility for probation, parole, or release, the prosecuting**
13 **or circuit attorney shall file a notice of such intent after conviction and before sentencing.**

14 **3. (1) Any person who has been found guilty of murder in the first degree, and who**
15 **was sixteen years of age or older and under the age of eighteen at the time of the**
16 **commission of the offense, and who was sentenced to life without eligibility for probation**
17 **or parole, or release except by act of the governor prior to June 25, 2012, shall be eligible**
18 **for a parole hearing after having served fifty years.**

19 **(2) Any person who has been found guilty of murder in the first degree, and who**
20 **was under the age of sixteen at the time of the commission of the offense, and who was**
21 **sentenced to life without eligibility for probation or parole, or release except by act of the**
22 **governor prior to June 25, 2012, shall be eligible for a parole hearing after having served**
23 **thirty-five years.**

 565.040. 1. In the event that the death penalty provided in this chapter is held to be
2 unconstitutional, any person convicted of murder in the first degree shall be sentenced by the
3 court to life imprisonment without eligibility for probation, parole, or release except by act of
4 the governor, with the exception that when a specific aggravating circumstance found in a case
5 is held to be unconstitutional or invalid for another reason, the supreme court of Missouri is
6 further authorized to remand the case for resentencing or retrial of the punishment pursuant to
7 subsection 5 of section [565.036] **565.035.**

8 2. In the event that any death sentence imposed pursuant to this chapter is held to be
9 unconstitutional, the trial court which previously sentenced the defendant to death shall cause
10 the defendant to be brought before the court and shall sentence the defendant to life
11 imprisonment without eligibility for probation, parole, or release except by act of the governor,
12 with the exception that when a specific aggravating circumstance found in a case is held to be
13 inapplicable, unconstitutional or invalid for another reason, the supreme court of Missouri is
14 further authorized to remand the case for retrial of the punishment pursuant to subsection 5 of
15 section 565.035.

 Section B. The repeal and reenactment of section 565.032 of this act shall become
2 effective on January 1, 2017.

 Section C. Because of the need to adopt a punishment scheme for first degree murderers
2 of a certain age after the United States Supreme Court declared as unconstitutional the only
3 punishment available under Missouri law for such offenders, the repeal and reenactment of
4 section 565.020, and the enactment of section 565.033 of this act is deemed necessary for the
5 immediate preservation of the public health, welfare, peace and safety, and is hereby declared
6 to be an emergency act within the meaning of the constitution, and the repeal and reenactment

7 of section 565.020, and the enactment of section 565.033 of this act shall be in full force and
8 effect upon its passage and approval.

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