

SECOND REGULAR SESSION

# SENATE BILL NO. 1047

90TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS ROHRBACH, JACOB, GOODE AND BENTLEY.

Read 1st time February 24, 2000, and 1,000 copies ordered printed.

4543S.011

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal section 565.020, RSMo 1994, relating to certain criminal procedures, and to enact in lieu thereof one new section relating to the same subject, with penalty provisions.

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

Section A. Section 565.020, RSMo 1994, is repealed and one new section enacted in lieu thereof, to be known as section 565.020, to read as follows:

565.020. 1. A person commits the crime of murder in the first degree if he knowingly causes the death of another person after deliberation upon the matter.

2. Murder in the first degree is a class A felony, and the punishment shall be either death or imprisonment for life without eligibility for probation or parole, or release except by act of the governor; except that, if a person has not reached his sixteenth birthday at the time of the commission of the crime, **or if a person has mental retardation**, the punishment shall be imprisonment for life without eligibility for probation or parole, or release except by act of the governor.

3. **For purposes of this section, "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which were manifested and documented before sixteen years of age. The requirement for documentation may be excused by the court upon a finding that extraordinary circumstances exist.**

4. **As used in this section, the following terms mean:**

(1) **"Adaptive behavior", the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age or cultural group;**

(2) **"General intellectual functioning", the results obtained by assessment with**

**one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning;**

**(3) "Significantly subaverage general intellectual functioning", a functional intelligence quotient of approximately seventy or below on standardized tests of general intellectual functioning.**

**5. Any defendant may file a motion with the trial court in which the defendant may allege that such defendant is a mentally retarded defendant. Such motion shall be filed at least ninety days prior to trial.**

**6. The court shall hold a hearing upon any motion filed pursuant to subsection 5 of this section, and shall make a determination regarding such motion no later than ten days prior to trial. At the hearing, the defendant shall be permitted to present evidence with regard to the motion and the prosecution shall be permitted to offer evidence in rebuttal. The defendant shall have the burden of proof to show by a preponderance of the evidence that such defendant is mentally retarded. A functional intelligence quotient of seventy or below documented during the developmental period shall constitute prima facie evidence of mental retardation. The court shall enter specific findings of fact and conclusions of law regarding whether or not the defendant is mentally retarded as defined in this section.**

**7. Procedures set forth in chapter 552, RSMo, pertaining to the pretrial determination of mental disease or defect shall govern the examination of the defendant for purposes of determining mental retardation pursuant to this section.**

**8. The state shall have the right of interlocutory appeal from a determination by the court prior to trial that the defendant is mentally retarded. A ruling by the court that the defendant does not have mental retardation pursuant to this section shall not restrict the defendant's opportunity to introduce such evidence at the sentencing proceeding or to argue that the evidence should preclude or mitigate against a death sentence. If the sentencing proceeding is conducted before a jury, the jury shall not be informed of any ruling denying a defendant's motion pursuant to this section.**

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