SECOND REGULAR SESSION

[C O R R E C T E D]

SENATE BILL NO. 775

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALSH.

Read 1st time January 23, 2014, and ordered printed.

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TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 546.680, 546.690, 546.700, 546.710, 546.720, 546.730, 546.740, 546.750, 546.800, 546.810, 546.820, 565.004, 565.006, 565.020, 565.030, 565.032, 565.035, and 565.040, RSMo, and to enact in lieu thereof four new sections relating to repealing the death penalty, with penalty provisions.

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

Section A. Sections 546.680, 546.690, 546.700, 546.710, 546.720, 546.730,
546.740, 546.750, 546.800, 546.810, 546.820, 565.004, 565.006, 565.020, 565.030,
565.032, 565.035, and 565.040, RSMo, are repealed and four new sections enacted
in lieu thereof, to be known as sections 565.004, 565.006, 565.020, and 565.040,
to read as follows:

565.004. 1. Each homicide offense which is lawfully joined in the same indictment or information together with any homicide offense or offense other 2 3 than a homicide shall be charged together with such offense in separate counts. A count charging any offense of homicide may only be charged and tried together 4 with one or more counts of any other homicide or offense other than a homicide $\mathbf{5}$ as provided in subsection 2 of section 545.140. Except as provided in subsections 6 7 2, 3, and 4 of this section, no murder in the first degree offense may be tried 8 together with any offense other than murder in the first degree. In the event of 9 a joinder of homicide offenses, all offenses charged which are supported by the 10 evidence in the case, together with all proper lesser offenses under section 11 565.025, shall, when requested by one of the parties or the court, be submitted to the jury or, in a jury-waived trial, considered by the judge. 12

13 2. A count charging any offense of homicide of a particular individual may

be joined in an indictment or information and tried with one or more counts 14 charging alternatively any other homicide or offense other than a homicide 15committed against that individual. The state shall not be required to make an 16 election as to the alternative count on which it will proceed. This subsection in 17no way limits the right to try in the conjunctive, where they are properly joined 18 under subsection 1 of this section, either separate offenses other than murder in 19 20the first degree or separate offenses of murder in the first degree committed 21against different individuals.

223. When a defendant has been charged and proven before trial to be a 23prior offender pursuant to chapter 558 so that the judge shall assess punishment 24and not a jury for an offense other than murder in the first degree, that offense 25may be tried and submitted to the trier together with any murder in the first 26degree charge with which it is lawfully joined. In such case the judge will assess 27punishment on any offense joined with a murder in the first degree charge 28according to law and, when the trier is a jury, it shall be instructed upon punishment on the charge of murder in the first degree in accordance with section 2930 565.030.

31 [4. When the state waives the death penalty for a murder first degree 32 offense, that offense may be tried and submitted to the trier together with any 33 other charge with which it is lawfully joined.]

565.006. 1. At any time before the commencement of the trial of a homicide offense, the defendant may, with the assent of the court, waive a trial by jury and agree to submit all issues in the case to the court, whose finding shall have the force and effect of a verdict of a jury. Such a waiver must include a waiver of a trial by jury of all issues and offenses charged in the case, including the punishment to be assessed and imposed if the defendant is found guilty.

7 2. No defendant who pleads guilty to a homicide offense or who is found
8 guilty of a homicide offense after trial to the court without a jury shall be
9 permitted a trial by jury on the issue of the punishment to be imposed, except by
10 agreement of the state.

11 3. [If a defendant is found guilty of murder in the first degree after a jury 12 trial in which the state has not waived the death penalty, the defendant may not 13 waive a jury trial of the issue of the punishment to be imposed, except by 14 agreement with the state and the court.

4.] Any waiver of a jury trial and agreement permitted by this sectionshall be entered in the court record.

565.020. 1. A person commits the crime of murder in the first degree if 2 [he] such person knowingly causes the death of another person after 3 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, the punishment shall be imprisonment for life without eligibility for probation or parole, or release except by act of the governor].

565.040. [1. In the event that the death penalty provided in this chapter $\mathbf{2}$ is held to be unconstitutional, Any person convicted of murder in the first degree 3 [shall be] and sentenced by the court to death prior to August 28, 2014, shall be sentenced by the court to life imprisonment without eligibility for 4 probation, parole, or release except by act of the governor, with the exception 5that when a specific aggravating circumstance found in a case is held to be 6 unconstitutional or invalid for another reason, the supreme court of Missouri is 7 8 further authorized to remand the case for resentencing or retrial of the 9 punishment pursuant to subsection 5 of section 565.036.

10 2. In the event that any death sentence imposed pursuant to this chapter is held to be unconstitutional, the trial court which previously sentenced the 11 12defendant to death shall cause the defendant to be brought before the court and 13shall sentence the defendant to life imprisonment without eligibility for probation, parole, or release except by act of the governor, with the exception that 14 when a specific aggravating circumstance found in a case is held to be 15inapplicable, unconstitutional or invalid for another reason, the supreme court 16 of Missouri is further authorized to remand the case for retrial of the punishment 17pursuant to subsection 5 of section 565.035]. 18

[546.680. When judgment of death is rendered by any court 2 of competent jurisdiction, a warrant signed by the judge and 3 attested by the clerk under the seal of the court must be drawn and delivered to the sheriff. It must state the conviction and judgment 4 $\mathbf{5}$ and appoint a day on which the judgment must be executed, which 6 must not be less than thirty nor more than sixty days from the date 7 of judgment, and must direct the sheriff to deliver the defendant, 8 at a time specified in said order, not more than ten days from the date of judgment, to the chief administrative officer of a 9

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correctional facility of the department of corrections, for execution.] [546.690. The judge of a court at which a conviction is had must, immediately after the conviction, transmit to the governor of the state, by mail or otherwise, a statement of the conviction and judgment.]

[546.700. Whenever, for any reason, any convict sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the cause shall stand in full force, the supreme court, or the court of the county in which the conviction was had, on the application of the prosecuting attorney, shall issue a writ of habeas corpus to bring such convict before the court; or if he be at large, a warrant for his apprehension may be issued by such court, or any judge thereof.]

[546.710. Upon such convicted offender being brought before the court, they shall proceed to inquire into the facts, and if no legal reasons exist against the execution of sentence, such court shall issue a warrant to the director of the department of corrections, for the execution of the prisoner at the time therein specified, which execution shall be obeyed by the director accordingly.]

[546.720. 1. The manner of inflicting the punishment of $\mathbf{2}$ death shall be by the administration of lethal gas or by means of 3 the administration of lethal injection. And for such purpose the 4 director of the department of corrections is hereby authorized and directed to provide a suitable and efficient room or place, enclosed $\mathbf{5}$ from public view, within the walls of a correctional facility of the 6 7 department of corrections, and the necessary appliances for carrying into execution the death penalty by means of the 8 9 administration of lethal gas or by means of the administration of 10 lethal injection.

11 2. The director of the department of corrections shall select 12 an execution team which shall consist of those persons who 13 administer lethal gas or lethal chemicals and those persons, such 14 as medical personnel, who provide direct support for the 15 administration of lethal gas or lethal chemicals. The identities of 16 members of the execution team, as defined in the execution protocol

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17of the department of corrections, shall be kept 18 confidential. Notwithstanding any provision of law to the contrary, any portion of a record that could identify a person as being a 19 20current or former member of an execution team shall be privileged 21and shall not be subject to discovery, subpoena, or other means of 22legal compulsion for disclosure to any person or entity, the 23remainder of such record shall not be privileged or closed unless protected from disclosure by law. The section of an execution 2425protocol that directly relates to the administration of lethal gas or 26lethal chemicals is an open record, the remainder of any execution 27protocol of the department of corrections is a closed record.

3. A person may not, without the approval of the director
of the department of corrections, knowingly disclose the identity of
a current or former member of an execution team or disclose a
record knowing that it could identify a person as being a current
or former member of an execution team. Any person whose identity
is disclosed in violation of this section shall:

34 (1) Have a civil cause of action against a person who35 violates this section;

36 37 (2) Be entitled to recover from any such person:

(a) Actual damages; and

38 (b) Punitive damages on a showing of a willful violation of39 this section.

40 4. Notwithstanding any provision of law to the contrary, if 41 a member of the execution team is licensed by a board or 42 department, the licensing board or department shall not censure, reprimand, suspend, revoke, or take any other disciplinary action 43against the person's license because of his or her participation in 44 a lawful execution. All members of the execution team are entitled 4546 to coverage under the state legal expense fund established by section 105.711 for conduct of such execution team member arising 47out of and performed in connection with his or her official duties on 48 49 behalf of the state or any agency of the state, provided that moneys 50in this fund shall not be available for payment of claims under 51chapter 287.]

[546.730. A judgment of death must be executed within a

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correctional center of the department of corrections; and such execution shall be under the supervision and direction of the director of the department of corrections.]

[546.740. The chief administrative officer of the correctional $\mathbf{2}$ center, or his duly appointed representative shall be present at the execution and the director of the department of corrections shall 3 invite the presence of the attorney general of the state, and at least 4 5eight reputable citizens, to be selected by him; and he shall at the 6 request of the defendant, permit such clergy or religious leaders, 7 not exceeding two, as the defendant may name, and any person, 8 other than another incarcerated offender, relatives or friends, not 9 to exceed five, to be present at the execution, together with such 10 peace officers as he may think expedient, to witness the execution; but no person under twenty-one years of age shall be allowed to 11 12witness the execution.]

[546.750. After the execution the chief administrative officer of the correctional facility shall make a return upon the death warrant to the court by which the judgment was rendered, showing the time, mode and manner in which it was executed.]

[546.800. If, after any female convict shall be sentenced to $\mathbf{2}$ the punishment of death, the officer having charge of her person 3 shall have reason to suspect that she is pregnant, he shall in like 4 manner summon a jury of six persons, not less than three of whom 5shall be physicians, and shall give notice thereof to the prosecuting 6 attorney of the county where such criminal proceedings originated, or to the circuit attorney of the city of St. Louis, if such criminal 7 8 proceedings originated in that city, who shall attend, and the 9 proceedings shall be had as provided.]

[546.810. The inquisition shall be signed by the jury and the officer in charge of such convict, and if it appear that such female convict is pregnant with child, her execution shall be suspended and the inquisition shall be transmitted to the governor.]

[546.820. Whenever the governor shall be satisfied that the cause of such suspension no longer exists, he shall issue his warrant, appointing a day for the execution of such convict,

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pursuant to her sentence; or he may, at his discretion, commute her punishment to imprisonment in the penitentiary for life.]

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

6 2. Where murder in the first degree is submitted to the 7 trier without a waiver of the death penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier 8 9 shall decide only whether the defendant is guilty or not guilty of 10 any submitted offense. The issue of punishment shall not be 11 submitted to the trier at the first stage. If an offense is charged 12other than murder in the first degree in a count together with a count of murder in the first degree, the trial judge shall assess 13punishment on any such offense according to law, after the 1415defendant is found guilty of such offense and after he finds the 16 defendant to be a prior offender pursuant to chapter 558.

173. If murder in the first degree is submitted and the death 18penalty was not waived but the trier finds the defendant guilty of 19 a lesser homicide, a second stage of the trial shall proceed at which 20 the only issue shall be the punishment to be assessed and 21declared. No further evidence shall be received. If the trier is a 22jury it shall be instructed on the law. The attorneys may then 23argue as in other criminal cases the issue of punishment, after which the trier shall assess and declare the punishment as in all 2425other criminal cases.

4. If the trier at the first stage of a trial where the death 2627penalty was not waived finds the defendant guilty of murder in the 28first degree, a second stage of the trial shall proceed at which the only issue shall be the punishment to be assessed and 2930 declared. Evidence in aggravation and mitigation of punishment, 31 including but not limited to evidence supporting any of the 32aggravating or mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be presented subject to the rules of 33 34evidence at criminal trials. Such evidence may include, within the

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35	discretion of the court, evidence concerning the murder victim and
36	the impact of the crime upon the family of the victim and
37	others. Rebuttal and surrebuttal evidence may be presented. The
38	state shall be the first to proceed. If the trier is a jury it shall be
39	instructed on the law. The attorneys may then argue the issue of
40	punishment to the jury, and the state shall have the right to open
41	and close the argument. The trier shall assess and declare the
42	punishment at life imprisonment without eligibility for probation,
43	parole, or release except by act of the governor:
44	(1) If the trier finds by a preponderance of the evidence that
45	the defendant is mentally retarded; or
46	(2) If the trier does not find beyond a reasonable doubt at
47	least one of the statutory aggravating circumstances set out in
48	subsection 2 of section 565.032; or
49	(3) If the trier concludes that there is evidence in mitigation
50	of punishment, including but not limited to evidence supporting the
51	statutory mitigating circumstances listed in subsection 3 of section
52	565.032, which is sufficient to outweigh the evidence in aggravation
53	of punishment found by the trier; or
54	(4) If the trier decides under all of the circumstances not to
55	assess and declare the punishment at death. If the trier is a jury
56	it shall be so instructed.
57	If the trier assesses and declares the punishment at death it shall,
58	in its findings or verdict, set out in writing the aggravating
59	circumstance or circumstances listed in subsection 2 of section
60	565.032 which it found beyond a reasonable doubt. If the trier is
61	a jury it shall be instructed before the case is submitted that if it
62	is unable to decide or agree upon the punishment the court shall
63	assess and declare the punishment at life imprisonment without
64	eligibility for probation, parole, or release except by act of the
65	governor or death. The court shall follow the same procedure as
66	set out in this section whenever it is required to determine
67	punishment for murder in the first degree.
68	5. Upon written agreement of the parties and with leave of
69	the court, the issue of the defendant's mental retardation may be
70	taken up by the court and decided prior to trial without prejudicing

the defendant's right to have the issue submitted to the trier of factas provided in subsection 4 of this section.

6. As used in this section, the terms "mental retardation" 73 74or "mentally retarded" refer to a condition involving substantial limitations in general functioning characterized by significantly 7576subaverage intellectual functioning with continual extensive 77related deficits and limitations in two or more adaptive behaviors such as communication, self-care, home living, social skills, 7879 community use, self-direction, health and safety, functional 80 academics, leisure and work, which conditions are manifested and 81 documented before eighteen years of age.

82 7. The provisions of this section shall only govern offenses
83 committed on or after August 28, 2001.]

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

5 (1) Whether a statutory aggravating circumstance or 6 circumstances enumerated in subsection 2 of this section is 7 established by the evidence beyond a reasonable doubt; and

8 (2) If а statutory aggravating circumstance or 9 circumstances is proven beyond a reasonable doubt, whether the 10 evidence as a whole justifies a sentence of death or a sentence of 11 life imprisonment without eligibility for probation, parole, or 12release except by act of the governor. In determining the issues enumerated in subdivisions (1) and (2) of this subsection, the trier 13shall consider all evidence which it finds to be in aggravation or 14mitigation of punishment, including evidence received during the 1516 first stage of the trial and evidence supporting any of the statutory 17aggravating or mitigating circumstances set out in subsections 2 and 3 of this section. If the trier is a jury, it shall not be 1819 instructed upon any specific evidence which may be in aggravation 20or mitigation of punishment, but shall be instructed that each juror 21shall consider any evidence which he considers to be aggravating 22or mitigating.

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2. Statutory aggravating circumstances for a murder in the

24first degree offense shall be limited to the following: 25(1) The offense was committed by a person with a prior 26record of conviction for murder in the first degree, or the offense 27was committed by a person who has one or more serious assaultive 28criminal convictions; 29 (2) The murder in the first degree offense was committed 30 while the offender was engaged in the commission or attempted 31 commission of another unlawful homicide; 32(3) The offender by his act of murder in the first degree 33 knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous 3435 to the lives of more than one person; 36 (4) The offender committed the offense of murder in the 37 first degree for himself or another, for the purpose of receiving 38 money or any other thing of monetary value from the victim of the 39 murder or another: 40 (5) The murder in the first degree was committed against a judicial officer, former judicial officer, prosecuting attorney or 41 former prosecuting attorney, circuit attorney or former circuit 42 43attorney, assistant prosecuting attorney or former assistant 44 prosecuting attorney, assistant circuit attorney or former assistant circuit attorney, peace officer or former peace officer, elected official 4546 or former elected official during or because of the exercise of his 47official duty; (6) The offender caused or directed another to commit 48 murder in the first degree or committed murder in the first degree 49 as an agent or employee of another person; 50(7) The murder in the first degree was outrageously or 5152wantonly vile, horrible or inhuman in that it involved torture, or 53depravity of mind; (8) The murder in the first degree was committed against 54any peace officer, or fireman while engaged in the performance of 55his official duty: 56 57(9) The murder in the first degree was committed by a 58person in, or who has escaped from, the lawful custody of a peace

59 officer or place of lawful confinement;

60 (10) The murder in the first degree was committed for the
61 purpose of avoiding, interfering with, or preventing a lawful arrest
62 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 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) 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) The murdered individual was killed as a result of the
hijacking of an airplane, train, ship, bus or other public
conveyance;

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

(16) 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;

86 (17) The murder was committed during the commission of
87 a crime which is part of a pattern of criminal street gang activity
88 as defined in section 578.421.

89 3. Statutory mitigating circumstances shall include the90 following:

91 (1) The defendant has no significant history of prior92 criminal activity;

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

96	(3) The victim was a participant in the defendant's conduct
97	or consented to the act;
98	(4) The defendant was an accomplice in the murder in the
99	first degree committed by another person and his participation was
100	relatively minor;
101	(5) The defendant acted under extreme duress or under the
102	substantial domination of another person;
103	(6) The capacity of the defendant to appreciate the
104	criminality of his conduct or to conform his conduct to the
105	requirements of law was substantially impaired;
106	(7) The age of the defendant at the time of the crime.]
	[565.035. 1. Whenever the death penalty is imposed in any
2	case, and upon the judgment becoming final in the trial court, the
3	sentence shall be reviewed on the record by the supreme court of
4	Missouri. The circuit clerk of the court trying the case, within ten
5	days after receiving the transcript, shall transmit the entire record
6	and transcript to the supreme court together with a notice
7	prepared by the circuit clerk and a report prepared by the trial
8	judge. The notice shall set forth the title and docket number of the
9	case, the name of the defendant and the name and address of his
10	attorney, a narrative statement of the judgment, the offense, and
11	the punishment prescribed. The report by the judge shall be in the
12	form of a standard questionnaire prepared and supplied by the
13	supreme court of Missouri.
14	2. The supreme court of Missouri shall consider the
15	punishment as well as any errors enumerated by way of appeal.
16	3. With regard to the sentence, the supreme court shall
17	determine:
18	(1) Whether the sentence of death was imposed under the
19	influence of passion, prejudice, or any other arbitrary factor; and
20	(2) Whether the evidence supports the jury's or judge's
21	finding of a statutory aggravating circumstance as enumerated in
22	subsection 2 of section 565.032 and any other circumstance found;
23	(3) Whether the sentence of death is excessive or
24	disproportionate to the penalty imposed in similar cases,
25	considering both the crime, the strength of the evidence and the

26 defendant.

4. Both the defendant and the state shall have the right to
submit briefs within the time provided by the supreme court, and
to present oral argument to the supreme court.

305. The supreme court shall include in its decision a31reference to those similar cases which it took into consideration. In32addition to its authority regarding correction of errors, the supreme33court, with regard to review of death sentences, shall be authorized34to:

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(1) Affirm the sentence of death; or

36 (2) Set the sentence aside and resentence the defendant to
37 life imprisonment without eligibility for probation, parole, or
38 release except by act of the governor; or

39 (3) Set the sentence aside and remand the case for retrial 40 of the punishment hearing. A new jury shall be selected or a jury may be waived by agreement of both parties and then the 41 42punishment trial shall proceed in accordance with this chapter, 43with the exception that the evidence of the guilty verdict shall be 44 admissible in the new trial together with the official transcript of any testimony and evidence properly admitted in each stage of the 4546 original trial where relevant to determine punishment.

476. There shall be an assistant to the supreme court, who 48 shall be an attorney appointed by the supreme court and who shall 49 serve at the pleasure of the court. The court shall accumulate the 50records of all cases in which the sentence of death or life imprisonment without probation or parole was imposed after May 515226, 1977, or such earlier date as the court may deem 53appropriate. The assistant shall provide the court with whatever extracted information the court desires with respect thereto, 54including but not limited to a synopsis or brief of the facts in the 5556record concerning the crime and the defendant. The court shall be 57authorized to employ an appropriate staff, within the limits of 58appropriations made for that purpose, and such methods to compile 59such data as are deemed by the supreme court to be appropriate 60 and relevant to the statutory questions concerning the validity of the sentence. The office of the assistant to the supreme court shall 61

62	be attached to the office of the clerk of the supreme court for
63	administrative purposes.
64	7. In addition to the mandatory sentence review, there shall
65	be a right of direct appeal of the conviction to the supreme court of
66	Missouri. This right of appeal may be waived by the defendant. If
67	an appeal is taken, the appeal and the sentence review shall be
68	consolidated for consideration. The court shall render its decision
69	on legal errors enumerated, the factual substantiation of the

verdict, and the validity of the sentence.]

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Unofficial