

FIRST REGULAR SESSION

SENATE BILL NO. 280

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Read 1st time January 20, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1524S.01I

AN ACT

To repeal section 565.020, RSMo, section 556.061 as enacted by house bill no. 1371, ninety-seventh general assembly, second regular session, and section 556.061 as enacted by house bill no. 215 merged with house bill no. 505, ninety-seventh general assembly, first regular session, and to enact in lieu thereof four new sections relating to first degree murder, 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. Section 565.020, RSMo, section 556.061 as enacted by house
2 bill no. 1371, ninety-seventh general assembly, second regular session, and
3 section 556.061 as enacted by house bill no. 215 merged with house bill no. 505,
4 ninety-seventh general assembly, first regular session, are repealed and four new
5 sections enacted in lieu thereof, to be known as sections 556.061, 558.047,
6 565.020, and 565.033, to read as follows:

556.061. In this code, unless the context requires a different definition,
2 the following terms shall mean:

3 (1) "Access", to instruct, communicate with, store data in, retrieve or
4 extract data from, or otherwise make any use of any resources of, a computer,
5 computer system, or computer network;

6 (2) "Affirmative defense":

7 (a) The defense referred to is not submitted to the trier of fact unless
8 supported by evidence; and

9 (b) If the defense is submitted to the trier of fact the defendant has the
10 burden of persuasion that the defense is more probably true than not;

11 (3) "Burden of injecting the issue":

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 (a) The issue referred to is not submitted to the trier of fact unless
13 supported by evidence; and

14 (b) If the issue is submitted to the trier of fact any reasonable doubt on
15 the issue requires a finding for the defendant on that issue;

16 (4) "Commercial film and photographic print processor", any person who
17 develops exposed photographic film into negatives, slides or prints, or who makes
18 prints from negatives or slides, for compensation. The term commercial film and
19 photographic print processor shall include all employees of such persons but shall
20 not include a person who develops film or makes prints for a public agency;

21 (5) "Computer", the box that houses the central processing unit (CPU),
22 along with any internal storage devices, such as internal hard drives, and
23 internal communication devices, such as internal modems capable of sending or
24 receiving electronic mail or fax cards, along with any other hardware stored or
25 housed internally. Thus, computer refers to hardware, software and data
26 contained in the main unit. Printers, external modems attached by cable to the
27 main unit, monitors, and other external attachments will be referred to
28 collectively as peripherals and discussed individually when appropriate. When
29 the computer and all peripherals are referred to as a package, the term "computer
30 system" is used. Information refers to all the information on a computer system
31 including both software applications and data;

32 (6) "Computer equipment", computers, terminals, data storage devices,
33 and all other computer hardware associated with a computer system or network;

34 (7) "Computer hardware", all equipment which can collect, analyze, create,
35 display, convert, store, conceal or transmit electronic, magnetic, optical or similar
36 computer impulses or data. Hardware includes, but is not limited to, any data
37 processing devices, such as central processing units, memory typewriters and
38 self-contained laptop or notebook computers; internal and peripheral storage
39 devices, transistor-like binary devices and other memory storage devices, such as
40 floppy disks, removable disks, compact disks, digital video disks, magnetic tape,
41 hard drive, optical disks and digital memory; local area networks, such as two or
42 more computers connected together to a central computer server via cable or
43 modem; peripheral input or output devices, such as keyboards, printers, scanners,
44 plotters, video display monitors and optical readers; and related communication
45 devices, such as modems, cables and connections, recording equipment, RAM or
46 ROM units, acoustic couplers, automatic dialers, speed dialers, programmable
47 telephone dialing or signaling devices and electronic tone-generating devices; as

48 well as any devices, mechanisms or parts that can be used to restrict access to
49 computer hardware, such as physical keys and locks;

50 (8) "Computer network", two or more interconnected computers or
51 computer systems;

52 (9) "Computer program", a set of instructions, statements, or related data
53 that directs or is intended to direct a computer to perform certain functions;

54 (10) "Computer software", digital information which can be interpreted by
55 a computer and any of its related components to direct the way they
56 work. Software is stored in electronic, magnetic, optical or other digital
57 form. The term commonly includes programs to run operating systems and
58 applications, such as word processing, graphic, or spreadsheet programs, utilities,
59 compilers, interpreters and communications programs;

60 (11) "Computer-related documentation", written, recorded, printed or
61 electronically stored material which explains or illustrates how to configure or
62 use computer hardware, software or other related items;

63 (12) "Computer system", a set of related, connected or unconnected,
64 computer equipment, data, or software;

65 (13) "Confinement":

66 (a) A person is in confinement when such person is held in a place of
67 confinement pursuant to arrest or order of a court, and remains in confinement
68 until:

69 a. A court orders the person's release; or

70 b. The person is released on bail, bond, or recognizance, personal or
71 otherwise; or

72 c. A public servant having the legal power and duty to confine the person
73 authorizes his release without guard and without condition that he return to
74 confinement;

75 (b) A person is not in confinement if:

76 a. The person is on probation or parole, temporary or otherwise; or

77 b. The person is under sentence to serve a term of confinement which is
78 not continuous, or is serving a sentence under a work-release program, and in
79 either such case is not being held in a place of confinement or is not being held
80 under guard by a person having the legal power and duty to transport the person
81 to or from a place of confinement;

82 (14) "Consent": consent or lack of consent may be expressed or
83 implied. Assent does not constitute consent if:

84 (a) It is given by a person who lacks the mental capacity to authorize the
85 conduct charged to constitute the offense and such mental incapacity is manifest
86 or known to the actor; or

87 (b) It is given by a person who by reason of youth, mental disease or
88 defect, intoxication, a drug-induced state, or any other reason is manifestly
89 unable or known by the actor to be unable to make a reasonable judgment as to
90 the nature or harmfulness of the conduct charged to constitute the offense; or

91 (c) It is induced by force, duress or deception;

92 (15) "Controlled substance", a drug, substance, or immediate precursor in
93 schedules I through V as defined in chapter 195;

94 (16) "Criminal negligence", failure to be aware of a substantial and
95 unjustifiable risk that circumstances exist or a result will follow, and such failure
96 constitutes a gross deviation from the standard of care which a reasonable person
97 would exercise in the situation;

98 (17) "Custody", a person is in custody when he or she has been arrested
99 but has not been delivered to a place of confinement;

100 (18) "Damage", when used in relation to a computer system or network,
101 means any alteration, deletion, or destruction of any part of the computer system
102 or network;

103 (19) "Dangerous felony", the felonies of arson in the first degree, assault
104 in the first degree, attempted rape in the first degree if physical injury results,
105 attempted forcible rape if physical injury results, attempted sodomy in the first
106 degree if physical injury results, attempted forcible sodomy if physical injury
107 results, rape in the first degree, forcible rape, sodomy in the first degree, forcible
108 sodomy, assault in the second degree if the victim of such assault is a special
109 victim as defined in subdivision (14) of section 565.002, kidnapping in the first
110 degree, kidnapping, **murder in the first degree**, murder in the second degree,
111 assault of a law enforcement officer in the first degree, domestic assault in the
112 first degree, elder abuse in the first degree, robbery in the first degree, statutory
113 rape in the first degree when the victim is a child less than twelve years of age
114 at the time of the commission of the act giving rise to the offense, statutory
115 sodomy in the first degree when the victim is a child less than twelve years of age
116 at the time of the commission of the act giving rise to the offense, child
117 molestation in the first or second degree, abuse of a child if the child dies as a
118 result of injuries sustained from conduct chargeable under section 568.060, child
119 kidnapping, parental kidnapping committed by detaining or concealing the

120 whereabouts of the child for not less than one hundred twenty days under section
121 565.153, and an "intoxication-related traffic offense" or "intoxication-related
122 boating offense" if the person is found to be a "habitual offender" or "habitual
123 boating offender" as such terms are defined in section 577.001;

124 (20) "Dangerous instrument", any instrument, article or substance, which,
125 under the circumstances in which it is used, is readily capable of causing death
126 or other serious physical injury;

127 (21) "Data", a representation of information, facts, knowledge, concepts,
128 or instructions prepared in a formalized or other manner and intended for use in
129 a computer or computer network. Data may be in any form including, but not
130 limited to, printouts, microfiche, magnetic storage media, punched cards and as
131 may be stored in the memory of a computer;

132 (22) "Deadly weapon", any firearm, loaded or unloaded, or any weapon
133 from which a shot, readily capable of producing death or serious physical injury,
134 may be discharged, or a switchblade knife, dagger, billy club, blackjack or metal
135 knuckles;

136 (23) "Digital camera", a camera that records images in a format which
137 enables the images to be downloaded into a computer;

138 (24) "Disability", a mental, physical, or developmental impairment that
139 substantially limits one or more major life activities or the ability to provide
140 adequately for one's care or protection, whether the impairment is congenital or
141 acquired by accident, injury or disease, where such impairment is verified by
142 medical findings;

143 (25) "Elderly person", a person sixty years of age or older;

144 (26) "Felony", an offense so designated or an offense for which persons
145 found guilty thereof may be sentenced to death or imprisonment for a term of
146 more than one year;

147 (27) "Forcible compulsion" either:

148 (a) Physical force that overcomes reasonable resistance; or

149 (b) A threat, express or implied, that places a person in reasonable fear
150 of death, serious physical injury or kidnapping of such person or another person;

151 (28) "Incapacitated", a temporary or permanent physical or mental
152 condition in which a person is unconscious, unable to appraise the nature of his
153 or her conduct, or unable to communicate unwillingness to an act;

154 (29) "Infraction", a violation defined by this code or by any other statute
155 of this state if it is so designated or if no sentence other than a fine, or fine and

156 forfeiture or other civil penalty, is authorized upon conviction;

157 (30) "Inhabitable structure", a vehicle, vessel or structure:

158 (a) Where any person lives or carries on business or other calling; or

159 (b) Where people assemble for purposes of business, government,
160 education, religion, entertainment, or public transportation; or

161 (c) Which is used for overnight accommodation of persons.

162 Any such vehicle, vessel, or structure is inhabitable regardless of whether a
163 person is actually present.

164 If a building or structure is divided into separately occupied units, any unit not
165 occupied by the actor is an inhabitable structure of another;

166 (31) "Knowingly", when used with respect to:

167 (a) Conduct or attendant circumstances, means a person is aware of the
168 nature of his or her conduct or that those circumstances exist; or

169 (b) A result of conduct, means a person is aware that his or her conduct
170 is practically certain to cause that result;

171 (32) "Law enforcement officer", any public servant having both the power
172 and duty to make arrests for violations of the laws of this state, and federal law
173 enforcement officers authorized to carry firearms and to make arrests for
174 violations of the laws of the United States;

175 (33) "Misdemeanor", an offense so designated or an offense for which
176 persons found guilty thereof may be sentenced to imprisonment for a term of
177 which the maximum is one year or less;

178 (34) "Of another", property that any entity, including but not limited to
179 any natural person, corporation, limited liability company, partnership,
180 association, governmental subdivision or instrumentality, other than the actor,
181 has a possessory or proprietary interest therein, except that property shall not
182 be deemed property of another who has only a security interest therein, even if
183 legal title is in the creditor pursuant to a conditional sales contract or other
184 security arrangement;

185 (35) "Offense", any felony or misdemeanor;

186 (36) "Physical injury", slight impairment of any function of the body or
187 temporary loss of use of any part of the body;

188 (37) "Place of confinement", any building or facility and the grounds
189 thereof wherein a court is legally authorized to order that a person charged with
190 or convicted of a crime be held;

191 (38) "Possess" or "possessed", having actual or constructive possession of

192 an object with knowledge of its presence. A person has actual possession if such
193 person has the object on his or her person or within easy reach and convenient
194 control. A person has constructive possession if such person has the power and
195 the intention at a given time to exercise dominion or control over the object either
196 directly or through another person or persons. Possession may also be sole or
197 joint. If one person alone has possession of an object, possession is sole. If two
198 or more persons share possession of an object, possession is joint;

199 (39) "Property", anything of value, whether real or personal, tangible or
200 intangible, in possession or in action;

201 (40) "Public servant", any person employed in any way by a government
202 of this state who is compensated by the government by reason of such person's
203 employment, any person appointed to a position with any government of this
204 state, or any person elected to a position with any government of this state. It
205 includes, but is not limited to, legislators, jurors, members of the judiciary and
206 law enforcement officers. It does not include witnesses;

207 (41) "Purposely", when used with respect to a person's conduct or to a
208 result thereof, means when it is his or her conscious object to engage in that
209 conduct or to cause that result;

210 (42) "Recklessly", consciously disregarding a substantial and unjustifiable
211 risk that circumstances exist or that a result will follow, and such disregard
212 constitutes a gross deviation from the standard of care which a reasonable person
213 would exercise in the situation;

214 (43) "Serious emotional injury", an injury that creates a substantial risk
215 of temporary or permanent medical or psychological damage, manifested by
216 impairment of a behavioral, cognitive or physical condition. Serious emotional
217 injury shall be established by testimony of qualified experts upon the reasonable
218 expectation of probable harm to a reasonable degree of medical or psychological
219 certainty;

220 (44) "Serious physical injury", physical injury that creates a substantial
221 risk of death or that causes serious disfigurement or protracted loss or
222 impairment of the function of any part of the body;

223 (45) "Services", when used in relation to a computer system or network,
224 means use of a computer, computer system, or computer network and includes,
225 but is not limited to, computer time, data processing, and storage or retrieval
226 functions;

227 (46) "Sexual orientation", male or female heterosexuality, homosexuality

228 or bisexuality by inclination, practice, identity or expression, or having a
229 self-image or identity not traditionally associated with one's gender;

230 (47) "Vehicle", a self-propelled mechanical device designed to carry a
231 person or persons, excluding vessels or aircraft;

232 (48) "Vessel", any boat or craft propelled by a motor or by machinery,
233 whether or not such motor or machinery is a principal source of propulsion used
234 or capable of being used as a means of transportation on water, or any boat or
235 craft more than twelve feet in length which is powered by sail alone or by a
236 combination of sail and machinery, and used or capable of being used as a means
237 of transportation on water, but not any boat or craft having, as the only means
238 of propulsion, a paddle or oars;

239 (49) "Voluntary act":

240 (a) A bodily movement performed while conscious as a result of effort or
241 determination. Possession is a voluntary act if the possessor knowingly procures
242 or receives the thing possessed, or having acquired control of it was aware of his
243 or her control for a sufficient time to have enabled him or her to dispose of it or
244 terminate his or her control; or

245 (b) An omission to perform an act of which the actor is physically capable.
246 A person is not guilty of an offense based solely upon an omission to perform an
247 act unless the law defining the offense expressly so provides, or a duty to perform
248 the omitted act is otherwise imposed by law;

249 (50) "Vulnerable person", any person in the custody, care, or control of the
250 department of mental health who is receiving services from an operated, funded,
251 licensed, or certified program.

556.061. In this code, unless the context requires a different definition,
2 the following shall apply:

3 (1) "Affirmative defense" has the meaning specified in section 556.056;

4 (2) "Burden of injecting the issue" has the meaning specified in section
5 556.051;

6 (3) "Commercial film and photographic print processor", any person who
7 develops exposed photographic film into negatives, slides or prints, or who makes
8 prints from negatives or slides, for compensation. The term commercial film and
9 photographic print processor shall include all employees of such persons but shall
10 not include a person who develops film or makes prints for a public agency;

11 (4) "Confinement":

12 (a) A person is in confinement when such person is held in a place of

13 confinement pursuant to arrest or order of a court, and remains in confinement
14 until:

15 a. A court orders the person's release; or

16 b. The person is released on bail, bond, or recognizance, personal or
17 otherwise; or

18 c. A public servant having the legal power and duty to confine the person
19 authorizes his release without guard and without condition that he return to
20 confinement;

21 (b) A person is not in confinement if:

22 a. The person is on probation or parole, temporary or otherwise; or

23 b. The person is under sentence to serve a term of confinement which is
24 not continuous, or is serving a sentence under a work-release program, and in
25 either such case is not being held in a place of confinement or is not being held
26 under guard by a person having the legal power and duty to transport the person
27 to or from a place of confinement;

28 (5) "Consent": consent or lack of consent may be expressed or
29 implied. Assent does not constitute consent if:

30 (a) It is given by a person who lacks the mental capacity to authorize the
31 conduct charged to constitute the offense and such mental incapacity is manifest
32 or known to the actor; or

33 (b) It is given by a person who by reason of youth, mental disease or
34 defect, intoxication, a drug-induced state, or any other reason is manifestly
35 unable or known by the actor to be unable to make a reasonable judgment as to
36 the nature or harmfulness of the conduct charged to constitute the offense; or

37 (c) It is induced by force, duress or deception;

38 (6) "Criminal negligence" has the meaning specified in section 562.016;

39 (7) "Custody", a person is in custody when the person has been arrested
40 but has not been delivered to a place of confinement;

41 (8) "Dangerous felony" means the felonies of arson in the first degree,
42 assault in the first degree, attempted rape in the first degree if physical injury
43 results, attempted forcible rape if physical injury results, attempted sodomy in
44 the first degree if physical injury results, attempted forcible sodomy if physical
45 injury results, rape in the first degree, forcible rape, sodomy in the first degree,
46 forcible sodomy, kidnapping, **murder in the first degree**, murder in the second
47 degree, assault of a law enforcement officer in the first degree, domestic assault
48 in the first degree, elder abuse in the first degree, robbery in the first degree,

49 statutory rape in the first degree when the victim is a child less than twelve
50 years of age at the time of the commission of the act giving rise to the offense,
51 statutory sodomy in the first degree when the victim is a child less than twelve
52 years of age at the time of the commission of the act giving rise to the offense,
53 and, abuse of a child if the child dies as a result of injuries sustained from
54 conduct chargeable under section 568.060, child kidnapping, and parental
55 kidnapping committed by detaining or concealing the whereabouts of the child for
56 not less than one hundred twenty days under section 565.153;

57 (9) "Dangerous instrument" means any instrument, article or substance,
58 which, under the circumstances in which it is used, is readily capable of causing
59 death or other serious physical injury;

60 (10) "Deadly weapon" means any firearm, loaded or unloaded, or any
61 weapon from which a shot, readily capable of producing death or serious physical
62 injury, may be discharged, or a switchblade knife, dagger, billy, blackjack or
63 metal knuckles;

64 (11) "Felony" has the meaning specified in section 556.016;

65 (12) "Forcible compulsion" means either:

66 (a) Physical force that overcomes reasonable resistance; or

67 (b) A threat, express or implied, that places a person in reasonable fear
68 of death, serious physical injury or kidnapping of such person or another person;

69 (13) "Incapacitated" means that physical or mental condition, temporary
70 or permanent, in which a person is unconscious, unable to appraise the nature of
71 such person's conduct, or unable to communicate unwillingness to an act;

72 (14) "Infraction" has the meaning specified in section 556.021;

73 (15) "Inhabitable structure" has the meaning specified in section 569.010;

74 (16) "Knowingly" has the meaning specified in section 562.016;

75 (17) "Law enforcement officer" means any public servant having both the
76 power and duty to make arrests for violations of the laws of this state, and
77 federal law enforcement officers authorized to carry firearms and to make arrests
78 for violations of the laws of the United States;

79 (18) "Misdemeanor" has the meaning specified in section 556.016;

80 (19) "Offense" means any felony, misdemeanor or infraction;

81 (20) "Physical injury" means physical pain, illness, or any impairment of
82 physical condition;

83 (21) "Place of confinement" means any building or facility and the grounds
84 thereof wherein a court is legally authorized to order that a person charged with

85 or convicted of a crime be held;

86 (22) "Possess" or "possessed" means having actual or constructive
87 possession of an object with knowledge of its presence. A person has actual
88 possession if such person has the object on his or her person or within easy reach
89 and convenient control. A person has constructive possession if such person has
90 the power and the intention at a given time to exercise dominion or control over
91 the object either directly or through another person or persons. Possession may
92 also be sole or joint. If one person alone has possession of an object, possession
93 is sole. If two or more persons share possession of an object, possession is joint;

94 (23) "Public servant" means any person employed in any way by a
95 government of this state who is compensated by the government by reason of such
96 person's employment, any person appointed to a position with any government of
97 this state, or any person elected to a position with any government of this state.
98 It includes, but is not limited to, legislators, jurors, members of the judiciary and
99 law enforcement officers. It does not include witnesses;

100 (24) "Purposely" has the meaning specified in section 562.016;

101 (25) "Recklessly" has the meaning specified in section 562.016;

102 (26) "Ritual" or "ceremony" means an act or series of acts performed by
103 two or more persons as part of an established or prescribed pattern of activity;

104 (27) "Serious emotional injury", an injury that creates a substantial risk
105 of temporary or permanent medical or psychological damage, manifested by
106 impairment of a behavioral, cognitive or physical condition. Serious emotional
107 injury shall be established by testimony of qualified experts upon the reasonable
108 expectation of probable harm to a reasonable degree of medical or psychological
109 certainty;

110 (28) "Serious physical injury" means physical injury that creates a
111 substantial risk of death or that causes serious disfigurement or protracted loss
112 or impairment of the function of any part of the body;

113 (29) "Sexual conduct" means acts of human masturbation; deviate sexual
114 intercourse; sexual intercourse; or physical contact with a person's clothed or
115 unclothed genitals, pubic area, buttocks, or the breast of a female in an act of
116 apparent sexual stimulation or gratification;

117 (30) "Sexual contact" means any touching of the genitals or anus of any
118 person, or the breast of any female person, or any such touching through the
119 clothing, for the purpose of arousing or gratifying sexual desire of any person;

120 (31) "Sexual performance", any performance, or part thereof, which

121 includes sexual conduct by a child who is less than seventeen years of age;

122 (32) "Voluntary act" has the meaning specified in section 562.011.

558.047. 1. Any person sentenced to a mandatory term of
2 imprisonment for life without eligibility for probation, parole, or
3 release for first degree murder before the effective date of this section
4 who was under eighteen years of age at the time of the commission of
5 the offense may submit to the sentencing court a petition for a review
6 of his or her sentence, regardless of whether the case is final for
7 purposes of appeal.

8 2. A copy of the petition shall be served on the attorney who
9 prosecuted the case. The petition shall include the person's statement
10 that he or she was under eighteen years of age at the time of the
11 offense, was sentenced to a mandatory term of imprisonment for life
12 without eligibility for probation, parole, or release, and requests to be
13 resentenced in accordance with section 565.033 in the same manner as
14 if the person had not previously been sentenced.

15 3. If any of the information required in subsection 2 of this
16 section is missing from the petition, or if proof of service on the
17 prosecuting or circuit attorney is not provided, the court shall return
18 the petition to the person and advise him or her that the matter cannot
19 be considered without the missing information.

20 4. A reply to the petition, if any, shall be filed with the court
21 within thirty days of the date on which the prosecuting or circuit
22 attorney was served with the petition, unless a continuance is granted
23 for good cause.

24 5. Unless the petition has been returned pursuant to subsection
25 3 of this section, the court shall hold a hearing to confirm that the
26 person is eligible for resentencing under section 565.033. A person is
27 eligible for resentencing under section 565.033 if he or she is currently
28 serving a mandatory term of imprisonment for life without eligibility
29 for parole, probation, or release for an offense committed when the
30 person was under eighteen years of age.

31 6. If the court determines the person is eligible, the matter shall
32 be set for resentencing in accordance with section 565.033. At such
33 resentencing, family members of the victim shall retain the right to
34 participate in the hearing.

565.020. 1. A person commits the [crime] offense of murder in the first

2 degree if he **or she** knowingly causes the death of another person after
3 deliberation upon the matter.

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

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

4 **(1) A person who at the time of the commission of the offense**
5 **was sixteen or seventeen years of age shall be sentenced to a term of**
6 **imprisonment of not less than fourteen years and not to exceed thirty**
7 **years, or life; and**

8 **(2) A person who at the time of the commission of the offense**
9 **was younger than sixteen years of age shall be sentenced to a term of**
10 **imprisonment of not less than twelve years and not to exceed thirty**
11 **years, or life.**

12 **2. When assessing punishment in all cases of murder in the first**
13 **degree in which the defendant was under the age of eighteen at the**
14 **time of the commission of the offense, the judge in a jury-waived trial**
15 **shall consider, or the judge shall include in instructions to the jury for**
16 **it to consider, the following factors:**

17 **(1) The impact of the offense on each victim, including oral and**
18 **written victim impact statements made or submitted by family members**
19 **of the victim detailing the physical, psychological, and economic effects**
20 **of the offense on the victim and the victim's family. A victim impact**
21 **statement may include comment on the sentence of the defendant;**

22 **(2) The impact of the offense on the community;**

23 **(3) The threat to the safety of the public or any individual posed**
24 **by the defendant;**

25 **(4) The nature and circumstances of the offense committed by**
26 **the defendant;**

27 **(5) The degree of the defendant's culpability in light of his or her**

28 age and role in the offense;

29 (6) The history and character of the defendant; and

30 (7) Other age-related characteristics of the defendant, including:

31 (a) Age;

32 (b) Mental capacity;

33 (c) Maturity;

34 (d) The degree of criminal sophistication exhibited by the
35 defendant;

36 (e) The nature and extent of any prior delinquent or criminal
37 history, including the success or failure of any previous attempts by the
38 court to rehabilitate the defendant;

39 (f) Probation or institutional reports; and

40 (g) Other relevant factors not inconsistent with *Miller v.*
41 *Alabama*.

42 3. In any resentencing ordered pursuant to section 558.047, the
43 court may also consider the following factors at a resentencing hearing:

44 (1) The defendant's experiences while incarcerated as a child;

45 (2) The defendant's maturation and emotional development over
46 time;

47 (3) The defendant's institutional record;

48 (4) Participation in substance abuse prevention or other
49 therapeutic institutional programming;

50 (5) Educational experiences while incarcerated including self-
51 study, high school studies, college course work, or technical training;

52 (6) Familial, faith-based, or other community ties during
53 incarceration;

54 (7) Other commitments to rehabilitation, community reentry, or
55 remorse;

56 (8) Other relevant factors not inconsistent with *Miller v.*
57 *Alabama*.

Section B. Because of the need to adopt a punishment scheme for first
2 degree murderers of a certain age after the United States Supreme Court
3 declared as unconstitutional the only punishment available under Missouri law
4 for such offenders, the repeal and reenactment of the second occurrence of section
5 556.061, the repeal and reenactment of section 565.020, and the enactment of
6 sections 558.047 and 565.033 of this act is deemed necessary for the immediate
7 preservation of the public health, welfare, peace and safety, and is hereby

8 declared to be an emergency act within the meaning of the constitution, and the
9 repeal and reenactment of the second occurrence of section 556.061, the repeal
10 and reenactment of section 565.020, and the enactment of sections 558.047 and
11 565.033 of this act shall be in full force and effect upon its passage and approval.

Section C. The repeal and reenactment of the first occurrence of section
2 556.061 of this act shall become effective January 1, 2017.

✓

Unofficial

Bill

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