

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 590

98TH GENERAL ASSEMBLY
2016

4323H.06T

AN ACT

To repeal sections 565.020, 565.030, 565.032, and 565.040, RSMo, and to enact in lieu thereof seven 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
2 repealed and seven new sections enacted in lieu thereof, to be known as sections
3 558.047, 565.020, 565.030, 565.032, 565.033, 565.034, and 565.040, to read as
4 follows:

558.047. 1. (1) Any person sentenced to a term of imprisonment
2 for life without eligibility for parole before August 28, 2016, who was
3 under eighteen years of age at the time of the commission of the offense
4 or offenses, may submit to the parole board a petition for a review of
5 his or her sentence, regardless of whether the case is final for purposes
6 of appeal, after serving twenty-five years of incarceration on the
7 sentence of life without parole.

8 (2) Any person found guilty of murder in the first degree who
9 was sentenced on or after August 28, 2016, to a term of life
10 imprisonment with eligibility for parole or a term of imprisonment of
11 not less than thirty years and not to exceed forty years, who was under
12 eighteen years of age at the time of the commission of the offense or

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

13 offenses may submit to the parole board a petition for a review of his
14 or her sentence, regardless of whether the case is final for purposes of
15 appeal, after serving twenty-five years of incarceration, and a
16 subsequent petition after serving thirty-five years of incarceration.

17 2. A copy of the petition shall be served on the office of the
18 prosecutor in the judicial circuit of original jurisdiction. The petition
19 shall include the person's statement that he or she was under eighteen
20 years of age at the time of the offense, is eligible to petition under this
21 section, and requests that his or her sentence be reviewed.

22 3. If any of the information required in subsection 2 of
23 this section is missing from the petition, or if proof of service on
24 the prosecuting or circuit attorney is not provided, the parole board
25 shall return the petition to the person and advise him or her that the
26 matter cannot be considered without the missing information.

27 4. The parole board shall hold a hearing and determine if the
28 defendant shall be granted parole. At such a hearing, the victim or
29 victim's family members shall retain their rights under section 595.209.

30 5. In a parole review hearing under this section, the board shall
31 consider, in addition to the factors listed in section 565.033:

32 (1) Efforts made toward rehabilitation since the offense or
33 offenses occurred, including participation in educational, vocational,
34 or other programs during incarceration, when available;

35 (2) The subsequent growth and increased maturity of the person
36 since the offense or offenses occurred;

37 (3) Evidence that the person has accepted accountability for the
38 offense or offenses, except in cases where the person has maintained
39 his or her innocence;

40 (4) The person's institutional record during incarceration; and

41 (5) Whether the person remains the same risk to society as he or
42 she did at the time of the initial sentencing.

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.**

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

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

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

23 4. If the trier at the first stage of a trial where the death penalty was not
24 waived finds the defendant guilty of murder in the first degree, a second stage of
25 the trial shall proceed at which the only issue shall be the punishment to be
26 assessed and declared. Evidence in aggravation and mitigation of punishment,
27 including but not limited to evidence supporting any of the aggravating or
28 mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be
29 presented subject to the rules of evidence at criminal trials. Such evidence may
30 include, within the discretion of the court, evidence concerning the murder victim
31 and the impact of the [crime] **offense** upon the family of the victim and
32 others. Rebuttal and surrebuttal evidence may be presented. The state shall be

33 the first to proceed. If the trier is a jury it shall be instructed on the law. The
34 attorneys may then argue the issue of punishment to the jury, and the state shall
35 have the right to open and close the argument. The trier shall assess and declare
36 the punishment at life imprisonment without eligibility for probation, parole, or
37 release except by act of the governor:

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

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

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

48 (4) If the trier decides under all of the circumstances not to assess and
49 declare the punishment at death. If the trier is a jury it shall be so instructed.
50 If the trier assesses and declares the punishment at death it shall, in its findings
51 or verdict, set out in writing the aggravating circumstance or circumstances listed
52 in subsection 2 of section 565.032 which it found beyond a reasonable doubt.

53 If the trier is a jury it shall be instructed before the case is submitted that if it
54 is unable to decide or agree upon the punishment the court shall assess and
55 declare the punishment at life imprisonment without eligibility for probation,
56 parole, or release except by act of the governor or death. The court shall follow
57 the same procedure as set out in this section whenever it is required to determine
58 punishment for murder in the first degree.

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

63 6. As used in this section, the terms "intellectual disability" or
64 "intellectually disabled" refer to a condition involving substantial limitations in
65 general functioning characterized by significantly subaverage intellectual
66 functioning with continual extensive related deficits and limitations in two or
67 more adaptive behaviors such as communication, self-care, home living, social
68 skills, community use, self-direction, health and safety, functional academics,

69 leisure and work, which conditions are manifested and documented before
70 eighteen years of age.

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

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

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

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

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

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

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

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

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

33 (5) The murder in the first degree was committed against a judicial
34 officer, former judicial officer, prosecuting attorney or former prosecuting
35 attorney, circuit attorney or former circuit attorney, assistant prosecuting
36 attorney or former assistant prosecuting attorney, assistant circuit attorney or
37 former assistant circuit attorney, peace officer or former peace officer, elected
38 official or former elected official during or because of the exercise of his official
39 duty;

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

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

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

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

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

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

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

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

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

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

68 (16) The murder was committed for the purpose of causing or attempting

69 to cause a person to refrain from initiating or aiding in the prosecution of a felony
70 offense defined in chapter 195 **or 579**;

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

74 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

87 (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
2 **who was under the age of eighteen at the time of the commission of the**
3 **offense shall be sentenced to a term of life without eligibility for**
4 **probation or parole as provided in section 565.034, life imprisonment**
5 **with eligibility for parole, or not less than thirty years and not to**
6 **exceed forty years imprisonment.**

7 **2. When assessing punishment in all first degree murder cases in**
8 **which the defendant was under the age of eighteen at the time of the**
9 **commission of the offense or offenses, the judge in a jury-waived trial**
10 **shall consider, or the judge shall include in instructions to the jury for**
11 **it to consider, the following factors:**

12 (1) **The nature and circumstances of the offense committed by**
13 **the defendant;**

14 (2) **The degree of the defendant's culpability in light of his or her**
15 **age and role in the offense;**

16 (3) **The defendant's age, maturity, intellectual capacity, and**
17 **mental and emotional health and development at the time of the**

18 offense;

19 (4) The defendant's background, including his or her family,
20 home, and community environment;

21 (5) The likelihood for rehabilitation of the defendant;

22 (6) The extent of the defendant's participation in the offense;

23 (7) The effect of familial pressure or peer pressure on the
24 defendant's actions;

25 (8) The nature and extent of the defendant's prior criminal
26 history, including whether the offense was committed by a person with
27 a prior record of conviction for murder in the first degree, or one or
28 more serious assaultive criminal convictions;

29 (9) The effect of characteristics attributable to the defendant's
30 youth on the defendant's judgment; and

31 (10) A statement by the victim or the victim's family member as
32 provided by section 557.041 until December 31, 2016, and beginning
33 January 1, 2017, section 595.229.

565.034. 1. If the state intends to seek a sentence of life without
2 eligibility for probation or parole for a person charged with murder in
3 the first degree who was under the age of eighteen at the time of the
4 commission of the offense, the state must file with the court and serve
5 upon the person a written notice of intent to seek life without
6 eligibility for probation or parole. This notice shall be provided within
7 one hundred twenty days of the person's arraignment upon an
8 indictment or information charging the person with murder in the first
9 degree. For good cause shown, the court may extend the period for
10 service and filing of the notice. Any notice of intent to seek life
11 without eligibility for probation or parole shall include a listing of the
12 statutory aggravating circumstances, as provided by subsection 6 of
13 this section, upon which the state will rely in seeking that sentence.

14 2. Notwithstanding any other provisions of law, where the state
15 files a notice of intent to seek life without eligibility for probation or
16 parole pursuant to this section, the defendant shall be entitled to an
17 additional sixty days for the purpose of filing new motions or
18 supplementing pending motions.

19 3. A notice of intent to seek life without eligibility for probation
20 or parole pursuant to this section may be withdrawn at any time by a
21 written notice of withdrawal filed with the court and served upon the

22 defendant. Once withdrawn, the notice of intent to seek life without
23 eligibility for probation or parole shall not be refiled.

24 4. After the state has filed a proper notice of intent to seek life
25 without eligibility for probation or parole pursuant to this section, the
26 trial shall proceed in two stages before the same trier. At the first
27 stage the trier shall decide only whether the person is guilty or not
28 guilty of any submitted offense. The issue of punishment shall not be
29 submitted to the trier at the first stage.

30 5. If the trier at the first stage of the trial finds the person guilty
31 of murder in the first degree, a second stage of the trial shall proceed
32 at which the only issue shall be the punishment to be assessed and
33 declared.

34 6. A person found guilty of murder in the first degree who was
35 under the age of eighteen at the time of the commission of the offense
36 is eligible for a sentence of life without eligibility for probation or
37 parole only if a unanimous jury, or a judge in a jury-waived sentencing,
38 finds beyond a reasonable doubt that:

39 (1) The victim received physical injuries personally inflicted by
40 the defendant and the physical injuries inflicted by the defendant
41 caused the death of the victim; and

42 (2) The defendant was found guilty of first degree murder and
43 one of the following aggravating factors was present:

44 (a) The defendant has a previous conviction for first degree
45 murder, assault in the first degree, rape in the first degree, or sodomy
46 in the first degree;

47 (b) The murder was committed during the perpetration of any
48 other first degree murder, assault in the first degree, rape in the first
49 degree, or sodomy in the first degree;

50 (c) The murder was committed as part of an agreement with a
51 third party that the defendant was to receive money or any other thing
52 of monetary value in exchange for the commission of the offense;

53 (d) The defendant inflicted severe pain on the victim for the
54 pleasure of the defendant or for the purpose of inflicting torture;

55 (e) The defendant killed the victim after he or she was bound or
56 otherwise rendered helpless by the defendant or another person;

57 (f) The defendant, while killing the victim or immediately
58 thereafter, purposely mutilated or grossly disfigured the body of the

59 **victim by an act or acts beyond that necessary to cause his or her**
60 **death;**

61 **(g) The defendant, while killing the victim or immediately**
62 **thereafter, had sexual intercourse with the victim or sexually violated**
63 **him or her;**

64 **(h) The defendant killed the victim for the purposes of causing**
65 **suffering to a third person; or**

66 **(i) The first degree murder was committed against a current or**
67 **former: judicial officer, prosecuting attorney or assistant prosecuting**
68 **attorney, law enforcement officer, firefighter, state or local corrections**
69 **officer; or against a witness or potential witness to a past or pending**
70 **investigation or prosecution, during or because of the exercise of their**
71 **official duty or status as a witness.**

565.040. 1. In the event that the death penalty provided in this chapter
2 is held to be unconstitutional, any person convicted of murder in the first degree
3 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 that
5 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 further authorized to remand the case for resentencing or retrial of the
8 punishment pursuant to subsection 5 of section [565.036] **565.035.**

9 2. In the event that any death sentence imposed pursuant to this chapter
10 is held to be unconstitutional, the trial court which previously sentenced the
11 defendant to death shall cause the defendant to be brought before the court and
12 shall sentence the defendant to life imprisonment without eligibility for
13 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
15 inapplicable, unconstitutional or invalid for another reason, the supreme court
16 of Missouri is further authorized to remand the case for retrial of the punishment
17 pursuant to subsection 5 of section 565.035.

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

Section C. 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 section 565.020, and the

5 enactment of sections 558.047, 565.033, and 565.034 of this act is deemed
6 necessary for the immediate preservation of the public health, welfare, peace and
7 safety, and is hereby declared to be an emergency act within the meaning of the
8 constitution, and the repeal and reenactment of section 565.020, and the
9 enactment of sections 558.047, 565.033, and 565.034 of this act shall be in full
10 force and effect upon its passage and approval.

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Bill

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