

FIRST REGULAR SESSION

SENATE BILL NO. 277

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time January 10, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0245S.011

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 existing 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546.750, 546.800, 546.810, 546.820, 565.004, 565.006, 565.020, 565.030, 565.032, 565.035, and 565.040, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 565.004, 565.006, 565.020, and 565.040, to read as follows: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 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 with one or more counts of any other homicide or offense other than a homicide as provided in subsection 2 of section 545.140. Except as provided in subsections 2[,] and 3[, and 4] of this section, no murder in the first degree offense may be tried together with any offense other than murder in the first degree. In the event of a joinder of homicide offenses, all offenses charged which are supported by the evidence in the case, together with all proper lesser offenses under section 565.029, 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.

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

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

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

22 3. When a defendant has been charged and proven before trial to be a
23 prior offender pursuant to chapter 558 so that the judge shall assess punishment
24 and not a jury for an offense other than murder in the first degree, that offense
25 may be tried and submitted to the trier together with any murder in the first
26 degree charge with which it is lawfully joined. In such case the judge will assess
27 punishment on any offense joined with a murder in the first degree charge
28 according to law and, when the trier is a jury, it shall be instructed upon
29 punishment on the charge of murder in the first degree in accordance with section
30 565.030.

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
2 homicide offense, the defendant may, with the assent of the court, waive a trial
3 by jury and agree to submit all issues in the case to the court, whose finding shall
4 have the force and effect of a verdict of a jury. Such a waiver must include a
5 waiver of a trial by jury of all issues and offenses charged in the case, including
6 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.

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

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

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

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] **and** sentenced by the court to **death prior to August 28, 2017, shall**
4 **be sentenced by the court to** life imprisonment without eligibility for
5 probation, parole, or release except by act of the governor[, with the exception
6 that when a specific aggravating circumstance found in a case is held to be
7 unconstitutional or invalid for another reason, the supreme court of Missouri is
8 further authorized to remand the case for resentencing or retrial of the
9 punishment pursuant to subsection 5 of section 565.035.

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

[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
4 delivered to the sheriff. It must state the conviction and judgment
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
9 date of judgment, to the chief administrative officer of a

10 correctional facility of the department of corrections, for execution.]

2 [546.690. The judge of a court at which a conviction is had
3 must, immediately after the conviction, transmit to the governor of
4 the state, by mail or otherwise, a statement of the conviction and
judgment.]

2 [546.700. Whenever, for any reason, any convict sentenced
3 to the punishment of death shall not have been executed pursuant
4 to such sentence, and the cause shall stand in full force, the
5 supreme court, or the court of the county in which the conviction
6 was had, on the application of the prosecuting attorney, shall issue
7 a writ of habeas corpus to bring such convict before the court; or if
8 he be at large, a warrant for his apprehension may be issued by
such court, or any judge thereof.]

2 [546.710. Upon such convicted offender being brought
3 before the court, they shall proceed to inquire into the facts, and if
4 no legal reasons exist against the execution of sentence, such court
5 shall issue a warrant to the director of the department of
6 corrections, for the execution of the prisoner at the time therein
7 specified, which execution shall be obeyed by the director
accordingly.]

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

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

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

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

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

37 (a) Actual damages; and

38 (b) Punitive damages on a showing of a willful violation of
39 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,
43 reprimand, suspend, revoke, or take any other disciplinary action
44 against the person's license because of his or her participation in
45 a lawful execution. All members of the execution team are entitled
46 to coverage under the state legal expense fund established by
47 section 105.711 for conduct of such execution team member arising
48 out of and performed in connection with his or her official duties on
49 behalf of the state or any agency of the state, provided that moneys
50 in this fund shall not be available for payment of claims under
51 chapter 287.]

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

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

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

2 [546.750. After the execution the chief administrative
3 officer of the correctional facility shall make a return upon the
4 death warrant to the court by which the judgment was rendered,
5 showing the time, mode and manner in which it was executed.]

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

2 [546.810. The inquisition shall be signed by the jury and
3 the officer in charge of such convict, and if it appear that such
4 female convict is pregnant with child, her execution shall be
5 suspended and the inquisition shall be transmitted to the
governor.]

2 [546.820. Whenever the governor shall be satisfied that the
3 cause of such suspension no longer exists, he shall issue his
warrant, appointing a day for the execution of such convict,

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

6 [565.030. 1. Where murder in the first degree is charged
7 but not submitted or where the state waives the death penalty, the
8 submission to the trier and all subsequent proceedings in the case
9 shall proceed as in all other criminal cases.

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

21 3. If murder in the first degree is submitted and the death
22 penalty was not waived but the trier finds the defendant guilty of
23 a lesser homicide, a second stage of the trial shall proceed as in all
24 other criminal cases. The attorneys may then argue as in other
25 criminal cases the issue of punishment, after which the trier shall
26 assess and declare the punishment as in all other criminal cases.

27 4. If the trier at the first stage of a trial where the death
28 penalty was not waived finds the defendant guilty of murder in the
29 first degree, a second stage of the trial shall proceed at which the
30 only issue shall be the punishment to be assessed and
31 declared. Evidence in aggravation and mitigation of punishment,
32 including but not limited to evidence supporting any of the
33 aggravating or mitigating circumstances listed in subsection 2 or
34 3 of section 565.032, may be presented subject to the rules of
evidence at criminal trials. Such evidence may include, within the
discretion of the court, evidence concerning the murder victim and
the impact of the offense upon the family of the victim and
others. Rebuttal and surrebuttal evidence may be presented. The
state shall be the first to proceed. If the trier is a jury it shall be

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

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

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

45 (3) If the trier concludes that there is evidence in mitigation
46 of punishment, including but not limited to evidence supporting the
47 statutory mitigating circumstances listed in subsection 3 of section
48 565.032, which is sufficient to outweigh the evidence in aggravation
49 of punishment found by the trier; or

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

53 If the trier assesses and declares the punishment at death it shall,
54 in its findings or verdict, set out in writing the aggravating
55 circumstance or circumstances listed in subsection 2 of section
56 565.032 which it found beyond a reasonable doubt. If the trier is
57 a jury it shall be instructed before the case is submitted that if it
58 is unable to decide or agree upon the punishment the court shall
59 assess and declare the punishment at life imprisonment without
60 eligibility for probation, parole, or release except by act of the
61 governor or death. The court shall follow the same procedure as
62 set out in this section whenever it is required to determine
63 punishment for murder in the first degree.

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

69 6. As used in this section, the terms "intellectual disability"
70 or "intellectually disabled" refer to a condition involving

71 substantial limitations in general functioning characterized by
72 significantly subaverage intellectual functioning with continual
73 extensive related deficits and limitations in two or more adaptive
74 behaviors such as communication, self-care, home living, social
75 skills, community use, self-direction, health and safety, functional
76 academics, leisure and work, which conditions are manifested and
77 documented before eighteen years of age.

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

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

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

9 (2) If a statutory aggravating circumstance or
10 circumstances is proven beyond a reasonable doubt, whether the
11 evidence as a whole justifies a sentence of death or a sentence of
12 life imprisonment without eligibility for probation, parole, or
13 release except by act of the governor.

14 In determining the issues enumerated in subdivisions (1) and (2)
15 of this subsection, the trier shall consider all evidence which it
16 finds to be in aggravation or mitigation of punishment, including
17 evidence received during the first stage of the trial and evidence
18 supporting any of the statutory aggravating or mitigating
19 circumstances set out in subsections 2 and 3 of this section. If the
20 trier is a jury, it shall not be instructed upon any specific evidence
21 which may be in aggravation or mitigation of punishment, but shall
22 be instructed that each juror shall consider any evidence which he
23 or she considers to be aggravating or mitigating.

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

26 (1) The offense was committed by a person with a prior
27 record of conviction for murder in the first degree, or the offense
was committed by a person who has one or more serious assaultive

28 criminal 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 or her act of murder in the first
33 degree knowingly created a great risk of death to more than one
34 person by means of a weapon or device which would normally be
35 hazardous 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 herself or another, for the purpose of
38 receiving money or any other thing of monetary value from the
39 victim of the murder or another;

40 (5) The murder in the first degree was committed against
41 a judicial officer, former judicial officer, prosecuting attorney or
42 former prosecuting attorney, circuit attorney or former circuit
43 attorney, assistant prosecuting attorney or former assistant
44 prosecuting attorney, assistant circuit attorney or former assistant
45 circuit attorney, peace officer or former peace officer, elected official
46 or former elected official during or because of the exercise of his
47 official duty;

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

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

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

57 (9) The murder in the first degree was committed by a
58 person 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 herself or
63 another;

64 (11) The murder in the first degree was committed while
65 the defendant was engaged in the perpetration or was aiding or
66 encouraging another person to perpetrate or attempt to perpetrate
67 a felony of any degree of rape, sodomy, burglary, robbery,
68 kidnapping, or any felony offense in chapter 195 or 579;

69 (12) The murdered individual was a witness or potential
70 witness in any past or pending investigation or past or pending
71 prosecution, and was killed as a result of his or her status as a
72 witness or potential witness;

73 (13) The murdered individual was an employee of an
74 institution or facility of the department of corrections of this state
75 or local correction agency and was killed in the course of
76 performing his or her official duties, or the murdered individual
77 was an inmate of such institution or facility;

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

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

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

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

90 3. Statutory mitigating circumstances shall include the
91 following:

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

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

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

99 (4) The defendant was an accomplice in the murder in the

100 first degree committed by another person and his or her
101 participation was relatively minor;

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

104 (6) The capacity of the defendant to appreciate the
105 criminality of his or her conduct or to conform his or her conduct
106 to the requirements of law was substantially impaired;

107 (7) The age of the defendant at the time of the offense.]

[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 offense, the strength of the evidence and the
26 defendant.

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

29 to present oral argument to the supreme court.

30 5. The supreme court shall include in its decision a
31 reference to those similar cases which it took into consideration. In
32 addition to its authority regarding correction of errors, the supreme
33 court, with regard to review of death sentences, shall be authorized
34 to:

35 (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
41 may be waived by agreement of both parties and then the
42 punishment trial shall proceed in accordance with this chapter,
43 with the exception that the evidence of the guilty verdict shall be
44 admissible in the new trial together with the official transcript of
45 any testimony and evidence properly admitted in each stage of the
46 original trial where relevant to determine punishment.

47 6. 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
50 records of all cases in which the sentence of death or life
51 imprisonment without probation or parole was imposed after May
52 26, 1977, or such earlier date as the court may deem
53 appropriate. The assistant shall provide the court with whatever
54 extracted information the court desires with respect thereto,
55 including but not limited to a synopsis or brief of the facts in the
56 record concerning the offense and the defendant. The court shall
57 be authorized to employ an appropriate staff, within the limits of
58 appropriations made for that purpose, and such methods to compile
59 such data as are deemed by the supreme court to be appropriate
60 and relevant to the statutory questions concerning the validity of
61 the sentence. The office of the assistant to the supreme court shall
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
70 verdict, and the validity of the sentence.]

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