

FIRST REGULAR SESSION

# SENATE BILL NO. 341

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

1136S.01I

ADRIANE D. CROUSE, Secretary

## AN ACT

To repeal section 565.030, RSMo, and to enact in lieu thereof one new section relating to jury instructions for the offense of murder in the first degree.

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

Section A. Section 565.030, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 565.030,  
3 to read as follows:

565.030. 1. Where murder in the first degree is  
2 charged but not submitted or where the state waives the  
3 death penalty, the submission to the trier and all  
4 subsequent proceedings in the case shall proceed as in all  
5 other criminal cases.

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

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

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

25           4. If the trier at the first stage of a trial where  
26 the death penalty was not waived finds the defendant guilty  
27 of murder in the first degree, a second stage of the trial  
28 shall proceed at which the only issue shall be the  
29 punishment to be assessed and declared. Evidence in  
30 aggravation and mitigation of punishment, including but not  
31 limited to evidence supporting any of the aggravating or  
32 mitigating circumstances listed in subsection 2 or 3 of  
33 section 565.032, may be presented subject to the rules of  
34 evidence at criminal trials. Such evidence may include,  
35 within the discretion of the court, evidence concerning the  
36 murder victim and the impact of the offense upon the family  
37 of the victim and others. Rebuttal and surrebuttal evidence  
38 may be presented. The state shall be the first to proceed.  
39 If the trier is a jury it shall be instructed on the law.  
40 The attorneys may then argue the issue of punishment to the  
41 jury, and the state shall have the right to open and close  
42 the argument. The trier shall assess and declare the  
43 punishment at life imprisonment without eligibility for  
44 probation, parole, or release except by act of the governor:

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

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

50           (3) If the trier concludes that there is evidence in  
51 mitigation of punishment, including but not limited to  
52 evidence supporting the statutory mitigating circumstances  
53 listed in subsection 3 of section 565.032, which is  
54 sufficient to outweigh the evidence in aggravation of  
55 punishment found by the trier; or

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

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

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

78           6. As used in this section, the terms "intellectual  
79 disability" or "intellectually disabled" refer to a  
80 condition involving substantial limitations in general

81 functioning characterized by significantly subaverage  
82 intellectual functioning with continual extensive related  
83 deficits and limitations in two or more adaptive behaviors  
84 such as communication, self-care, home living, social  
85 skills, community use, self-direction, health and safety,  
86 functional academics, leisure and work, which conditions are  
87 manifested and documented before eighteen years of age.

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

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