

SENATE SUBSTITUTE
FOR
SENATE BILL NO. 225
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Section A. Section 565.030, RSMo, is repealed and one new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.

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

attorneys may then argue as in other criminal cases the issue of punishment, after which the trier shall assess and declare the punishment as in all other criminal cases.

4. If the trier at the first stage of a trial where the death penalty was not waived finds the defendant guilty of murder in the first degree, a second stage of the trial shall proceed at which the only issue shall be the punishment to be assessed and declared. Evidence in aggravation and mitigation of punishment, including, but not limited to, evidence supporting any of the aggravating or mitigating circumstances listed in subsection 2 or 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 instructed on the law. The attorneys may then argue the issue of punishment to the jury, and the state shall have the right to open and close the argument. The trier shall assess and declare the punishment at life imprisonment without eligibility for probation, parole, or release except by act of the governor:

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

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

(3) If the trier concludes that there is evidence in mitigation of punishment, including, but not limited to, evidence supporting the statutory mitigating circumstances listed in subsection 3 of section 565.032, which is

sufficient to outweigh the evidence in aggravation of
punishment found by the trier; or

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

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

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

6. As used in this section, the terms "intellectual
disability" or "intellectually disabled" refer to a
condition involving substantial limitations in general
functioning characterized by significantly subaverage
intellectual functioning with continual extensive related
deficits and limitations in two or more adaptive behaviors
such as communication, self-care, home living, social
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.