

SENATE BILL NO. 1160

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEWIS.

4988S.011

KRISTINA MARTIN, Secretary

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, 557.021, 565.004, 565.005, 565.006, 565.020, 565.030, 565.032, 565.035, and 565.040, RSMo, and to enact in lieu thereof five new sections relating to repealing the death penalty, with 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,
2 546.720, 546.730, 546.740, 546.750, 546.800, 546.810, 546.820,
3 557.021, 565.004, 565.005, 565.006, 565.020, 565.030, 565.032,
4 565.035, and 565.040, RSMo, are repealed and five new sections
5 enacted in lieu thereof, to be known as sections 557.021,
6 565.004, 565.006, 565.020, and 565.040, to read as follows:

557.021. 1. Any offense defined outside this code
2 **[which] that** is declared to be a misdemeanor without
3 specification of the penalty therefor is a class A
4 misdemeanor.

2. Any offense defined outside this code **[which] that**
6 is declared to be a felony without specification of the
7 penalty therefor is a class E felony.

3. For the purpose of applying the extended term
9 provisions of section 558.016 and the minimum prison term
10 provisions of section 558.019 and for determining the
11 penalty for attempts, offenses defined outside of this code
12 shall be classified as follows:

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

- 13 (1) If the offense is a felony:
- 14 (a) It is a class A felony if the authorized penalty
15 includes [death,] life imprisonment; **imprisonment for life**
16 **without eligibility for probation, parole, or release except**
17 **by act of the governor;** or imprisonment for a term of twenty
18 years or more;
- 19 (b) It is a class B felony if the maximum term of
20 imprisonment authorized exceeds ten years but is less than
21 twenty years;
- 22 (c) It is a class C felony if the maximum term of
23 imprisonment authorized is ten years;
- 24 (d) It is a class D felony if the maximum term of
25 imprisonment exceeds four years but is less than ten years;
- 26 (e) It is a class E felony if the maximum term of
27 imprisonment is four years or less;
- 28 (2) If the offense is a misdemeanor:
- 29 (a) It is a class A misdemeanor if the authorized
30 imprisonment exceeds six months in jail;
- 31 (b) It is a class B misdemeanor if the authorized
32 imprisonment exceeds thirty days but is not more than six
33 months;
- 34 (c) It is a class C misdemeanor if the authorized
35 imprisonment is thirty days or less;
- 36 (d) It is a class D misdemeanor if it includes a
37 mental state as an element of the offense and there is no
38 authorized imprisonment;
- 39 (e) It is an infraction if there is no authorized
40 imprisonment.

565.004. 1. Each homicide offense [which] **that** is
2 lawfully joined in the same indictment or information
3 together with any homicide offense or offense other than a
4 homicide shall be charged together with such offense in

5 separate counts. A count charging any offense of homicide
6 may only be charged and tried together with one or more
7 counts of any other homicide or offense other than a
8 homicide as provided in subsection 2 of section 545.140.
9 Except as provided in subsections 2[,] **and** 3[, and 4] of
10 this section, no murder in the first degree offense may be
11 tried together with any offense other than murder in the
12 first degree. In the event of a joinder of homicide
13 offenses, all offenses charged which are supported by the
14 evidence in the case, together with all proper lesser
15 offenses under section 565.029, shall, when requested by one
16 of the parties or the court, be submitted to the jury or, in
17 a jury-waived trial, considered by the judge.

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

30 3. When a defendant has been charged and proven before
31 trial to be a prior offender pursuant to chapter 558 so that
32 the judge shall assess punishment and not a jury for an
33 offense other than murder in the first degree, that offense
34 may be tried and submitted to the trier together with any
35 murder in the first degree charge with which it is lawfully
36 joined. In such case the judge will assess punishment on

37 any offense joined with a murder in the first degree charge
38 according to law and, when the trier is a jury, it shall be
39 instructed upon punishment on the charge of murder in the
40 first degree [in accordance with section 565.030.

41 4. When the state waives the death penalty for a
42 murder first degree offense, that offense may be tried and
43 submitted to the trier together with any other charge with
44 which it is lawfully joined].

565.006. 1. At any time before the commencement of
2 the trial of a homicide offense, the defendant may, with the
3 assent of the court, waive a trial by jury and agree to
4 submit all issues in the case to the court, whose finding
5 shall have the force and effect of a verdict of a jury.
6 Such a waiver must include a waiver of a trial by jury of
7 all issues and offenses charged in the case, including the
8 punishment to be assessed and imposed if the defendant is
9 found guilty.

10 2. No defendant who pleads guilty to a homicide
11 offense or who is found guilty of a homicide offense after
12 trial to the court without a jury shall be permitted a trial
13 by jury on the issue of the punishment to be imposed, except
14 by agreement of the state.

15 3. [If a defendant is found guilty of murder in the
16 first degree after a jury trial in which the state has not
17 waived the death penalty, the defendant may not waive a jury
18 trial of the issue of the punishment to be imposed, except
19 by agreement with the state and the court.

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

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

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

 565.040. 1. [In the event that the death penalty
2 provided in this chapter is held to be unconstitutional,]
3 Any person convicted of murder in the first degree shall be
4 sentenced by the court to life imprisonment without
5 eligibility for probation, parole, or release except by act
6 of the governor[, with the exception that when a specific
7 aggravating circumstance found in a case is held to be
8 unconstitutional or invalid for another reason, the supreme
9 court of Missouri is further authorized to remand the case
10 for resentencing or retrial of the punishment pursuant to
11 subsection 5 of section 565.035].

 2. In [the event that] any **case in which a** death
13 sentence **has previously been** imposed pursuant to this
14 chapter [is held to be unconstitutional,] **but has not been**
15 **executed**, the trial court [which] **that** previously sentenced
16 the defendant to death shall cause the defendant to be
17 brought before the court and shall sentence the defendant to
18 life imprisonment without eligibility for probation, parole,
19 or release except by act of the governor[, with the
20 exception that when a specific aggravating circumstance
21 found in a case is held to be inapplicable, unconstitutional
22 or invalid for another reason, the supreme court of Missouri
23 is further authorized to remand the case for retrial of the
24 punishment pursuant to subsection 5 of section 565.035].

2 [546.680. When judgment of death is
3 rendered by any court of competent jurisdiction,
4 a warrant signed by the judge and attested by
5 the clerk under the seal of the court must be
6 drawn and delivered to the sheriff. It must
7 state the conviction and judgment and appoint a
8 day on which the judgment must be executed,
9 which must not be less than thirty nor more than
10 sixty days from the date of judgment, and must
11 direct the sheriff to deliver the defendant, at
12 a time specified in said order, not more than
13 ten days from the date of judgment, to the chief
14 administrative officer of a correctional
15 facility of the department of corrections, for
execution.]

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

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

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

2 [546.720. 1. The manner of inflicting the
punishment of death shall be by the

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

14 2. The director of the department of
15 corrections shall select an execution team which
16 shall consist of those persons who administer
17 lethal gas or lethal chemicals and those
18 persons, such as medical personnel, who provide
19 direct support for the administration of lethal
20 gas or lethal chemicals. The identities of
21 members of the execution team, as defined in the
22 execution protocol of the department of
23 corrections, shall be kept confidential.

24 Notwithstanding any provision of law to the
25 contrary, any portion of a record that could
26 identify a person as being a current or former
27 member of an execution team shall be privileged
28 and shall not be subject to discovery, subpoena,
29 or other means of legal compulsion for
30 disclosure to any person or entity, the
31 remainder of such record shall not be privileged
32 or closed unless protected from disclosure by
33 law. The section of an execution protocol that
34 directly relates to the administration of lethal
35 gas or lethal chemicals is an open record, the
36 remainder of any execution protocol of the
37 department of corrections is a closed record.

38 3. A person may not, without the approval
39 of the director of the department of
40 corrections, knowingly disclose the identity of
41 a current or former member of an execution team
42 or disclose a record knowing that it could
43 identify a person as being a current or former
44 member of an execution team. Any person whose
45 identity is disclosed in violation of this
46 section shall:

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

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

51 (a) Actual damages; and

52 (b) Punitive damages on a showing of a
53 willful violation of this section.

54 4. Notwithstanding any provision of law to
55 the contrary, if a member of the execution team
56 is licensed by a board or department, the
57 licensing board or department shall not censure,
58 reprimand, suspend, revoke, or take any other
59 disciplinary action against the person's license
60 because of his or her participation in a lawful
61 execution. All members of the execution team
62 are entitled to coverage under the state legal
63 expense fund established by section 105.711 for
64 conduct of such execution team member arising
65 out of and performed in connection with his or
66 her official duties on behalf of the state or
67 any agency of the state, provided that moneys in
68 this fund shall not be available for payment of
69 claims under chapter 287.]

2 [546.730. A judgment of death must be
3 executed within a correctional center of the
4 department of corrections; and such execution
5 shall be under the supervision and direction of
6 the director of the department of corrections.]

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

16 person under twenty-one years of age shall be
17 allowed to witness the execution.]

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

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

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

[546.820. Whenever the governor shall be
2 satisfied that the cause of such suspension no
3 longer exists, he shall issue his warrant,
4 appointing a day for the execution of such
5 convict, pursuant to her sentence; or he may, at
6 his discretion, commute her punishment to
7 imprisonment in the penitentiary for life.]

[565.005. 1. At a reasonable time before
2 the commencement of the first stage of any trial
3 of murder in the first degree at which the death
4 penalty is not waived, the state and defendant,
5 upon request and without order of the court,
6 shall serve counsel of the opposing party with:

7 (1) A list of all aggravating or
8 mitigating circumstances as provided in

9 subsection 1 of section 565.032, which the party
10 intends to prove at the second stage of the
11 trial;

12 (2) The names of all persons whom the
13 party intends to call as witnesses at the second
14 stage of the trial;

15 (3) Copies or locations and custodian of
16 any books, papers, documents, photographs or
17 objects which the party intends to offer at the
18 second stage of the trial. If copies of such
19 materials are not supplied to opposing counsel,
20 the party shall cause them to be made available
21 for inspection and copying without order of the
22 court.

23 2. The disclosures required in subsection
24 1 of this section are supplemental to those
25 required by rules of the supreme court relating
26 to a continuing duty to disclose information,
27 the use of matters disclosed, matters not
28 subject to disclosure, protective orders, and
29 sanctions for failure to comply with an
30 applicable discovery rule or order, all of which
31 shall also apply to any disclosure required by
32 this section.]

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

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

20 found guilty of such offense and after he finds
21 the defendant to be a prior offender pursuant to
22 chapter 558.

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

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

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

61 (2) If the trier does not find beyond a
62 reasonable doubt at least one of the statutory

63 aggravating circumstances set out in subsection
64 2 of section 565.032; or

65 (3) If the trier concludes that there is
66 evidence in mitigation of punishment, including
67 but not limited to evidence supporting the
68 statutory mitigating circumstances listed in
69 subsection 3 of section 565.032, which is
70 sufficient to outweigh the evidence in
71 aggravation of punishment found by the trier; or

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

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

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

99 6. As used in this section, the terms
100 "intellectual disability" or "intellectually
101 disabled" refer to a condition involving
102 substantial limitations in general functioning
103 characterized by significantly subaverage
104 intellectual functioning with continual
105 extensive related deficits and limitations in
106 two or more adaptive behaviors such as

107 communication, self-care, home living, social
108 skills, community use, self-direction, health
109 and safety, functional academics, leisure and
110 work, which conditions are manifested and
111 documented before eighteen years of age.

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

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

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

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

17 In determining the issues enumerated in
18 subdivisions (1) and (2) of this subsection, the
19 trier shall consider all evidence which it finds
20 to be in aggravation or mitigation of
21 punishment, including evidence received during
22 the first stage of the trial and evidence
23 supporting any of the statutory aggravating or
24 mitigating circumstances set out in subsections
25 2 and 3 of this section. If the trier is a
26 jury, it shall not be instructed upon any
27 specific evidence which may be in aggravation or
28 mitigation of punishment, but shall be
29 instructed that each juror shall consider any
30 evidence which he or she considers to be
31 aggravating or mitigating.

32 2. Statutory aggravating circumstances for
33 a murder in the first degree offense shall be
34 limited to the following:

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

40 (2) The murder in the first degree offense
41 was committed while the offender was engaged in
42 the commission or attempted commission of
43 another unlawful homicide;

44 (3) The offender by his or her act of
45 murder in the first degree knowingly created a
46 great risk of death to more than one person by
47 means of a weapon or device which would normally
48 be hazardous to the lives of more than one
49 person;

50 (4) The offender committed the offense of
51 murder in the first degree for himself or
52 herself or another, for the purpose of receiving
53 money or any other thing of monetary value from
54 the victim of the murder or another;

55 (5) The murder in the first degree was
56 committed against a judicial officer, former
57 judicial officer, prosecuting attorney or former
58 prosecuting attorney, circuit attorney or former
59 circuit attorney, assistant prosecuting attorney
60 or former assistant prosecuting attorney,
61 assistant circuit attorney or former assistant
62 circuit attorney, peace officer or former peace
63 officer, elected official or former elected
64 official during or because of the exercise of
65 his official duty;

66 (6) The offender caused or directed
67 another to commit murder in the first degree or
68 committed murder in the first degree as an agent
69 or employee of another person;

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

74 (8) The murder in the first degree was
75 committed against any peace officer, or fireman
76 while engaged in the performance of his or her
77 official duty;

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

82 (10) The murder in the first degree was
83 committed for the purpose of avoiding,
84 interfering with, or preventing a lawful arrest
85 or custody in a place of lawful confinement, of
86 himself or herself or another;

87 (11) The murder in the first degree was
88 committed while the defendant was engaged in the
89 perpetration or was aiding or encouraging
90 another person to perpetrate or attempt to
91 perpetrate a felony of any degree of rape,
92 sodomy, burglary, robbery, kidnapping, or any
93 felony offense in chapter 195 or 579;

94 (12) The murdered individual was a witness
95 or potential witness in any past or pending
96 investigation or past or pending prosecution,
97 and was killed as a result of his or her status
98 as a witness or potential witness;

99 (13) The murdered individual was an
100 employee of an institution or facility of the
101 department of corrections of this state or local
102 correction agency and was killed in the course
103 of performing his or her official duties, or the
104 murdered individual was an inmate of such
105 institution or facility;

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

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

112 (16) The murder was committed for the
113 purpose of causing or attempting to cause a
114 person to refrain from initiating or aiding in
115 the prosecution of a felony offense defined in
116 chapter 195 or 579;

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

121 3. Statutory mitigating circumstances
122 shall include the following:

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

125 (2) The murder in the first degree was
126 committed while the defendant was under the
127 influence of extreme mental or emotional
128 disturbance;

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

131 (4) The defendant was an accomplice in the
132 murder in the first degree committed by another
133 person and his or her participation was
134 relatively minor;

135 (5) The defendant acted under extreme
136 duress or under the substantial domination of
137 another person;

138 (6) The capacity of the defendant to
139 appreciate the criminality of his or her conduct
140 or to conform his or her conduct to the
141 requirements of law was substantially impaired;

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

 [565.035. 1. Whenever the death penalty
2 is imposed in any case, and upon the judgment
3 becoming final in the trial court, the sentence
4 shall be reviewed on the record by the supreme
5 court of Missouri. The circuit clerk of the
6 court trying the case, within ten days after
7 receiving the transcript, shall transmit the
8 entire record and transcript to the supreme
9 court together with a notice prepared by the
10 circuit clerk and a report prepared by the trial
11 judge. The notice shall set forth the title and
12 docket number of the case, the name of the
13 defendant and the name and address of his
14 attorney, a narrative statement of the judgment,
15 the offense, and the punishment prescribed. The
16 report by the judge shall be in the form of a
17 standard questionnaire prepared and supplied by
18 the supreme court of Missouri.]

19 2. The supreme court of Missouri shall
20 consider the punishment as well as any errors
21 enumerated by way of appeal.

22 3. With regard to the sentence, the
23 supreme court shall determine:

24 (1) Whether the sentence of death was
25 imposed under the influence of passion,
26 prejudice, or any other arbitrary factor; and

27 (2) Whether the evidence supports the
28 jury's or judge's finding of a statutory
29 aggravating circumstance as enumerated in
30 subsection 2 of section 565.032 and any other
31 circumstance found;

32 (3) Whether the sentence of death is
33 excessive or disproportionate to the penalty
34 imposed in similar cases, considering both the
35 offense, the strength of the evidence and the
36 defendant.

37 4. Both the defendant and the state shall
38 have the right to submit briefs within the time
39 provided by the supreme court, and to present
40 oral argument to the supreme court.

41 5. The supreme court shall include in its
42 decision a reference to those similar cases
43 which it took into consideration. In addition
44 to its authority regarding correction of errors,
45 the supreme court, with regard to review of
46 death sentences, shall be authorized to:

47 (1) Affirm the sentence of death; or

48 (2) Set the sentence aside and resentence
49 the defendant to life imprisonment without
50 eligibility for probation, parole, or release
51 except by act of the governor; or

52 (3) Set the sentence aside and remand the
53 case for retrial of the punishment hearing. A
54 new jury shall be selected or a jury may be
55 waived by agreement of both parties and then the
56 punishment trial shall proceed in accordance
57 with this chapter, with the exception that the
58 evidence of the guilty verdict shall be
59 admissible in the new trial together with the
60 official transcript of any testimony and
61 evidence properly admitted in each stage of the

62 original trial where relevant to determine
63 punishment.

64 6. There shall be an assistant to the
65 supreme court, who shall be an attorney
66 appointed by the supreme court and who shall
67 serve at the pleasure of the court. The court
68 shall accumulate the records of all cases in
69 which the sentence of death or life imprisonment
70 without probation or parole was imposed after
71 May 26, 1977, or such earlier date as the court
72 may deem appropriate. The assistant shall
73 provide the court with whatever extracted
74 information the court desires with respect
75 thereto, including but not limited to a synopsis
76 or brief of the facts in the record concerning
77 the offense and the defendant. The court shall
78 be authorized to employ an appropriate staff,
79 within the limits of appropriations made for
80 that purpose, and such methods to compile such
81 data as are deemed by the supreme court to be
82 appropriate and relevant to the statutory
83 questions concerning the validity of the
84 sentence. The office of the assistant to the
85 supreme court shall be attached to the office of
86 the clerk of the supreme court for
87 administrative purposes.

88 7. In addition to the mandatory sentence
89 review, there shall be a right of direct appeal
90 of the conviction to the supreme court of
91 Missouri. This right of appeal may be waived by
92 the defendant. If an appeal is taken, the
93 appeal and the sentence review shall be
94 consolidated for consideration. The court shall
95 render its decision on legal errors enumerated,
96 the factual substantiation of the verdict, and
97 the validity of the sentence.]

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