

FIRST REGULAR SESSION

HOUSE BILL NO. 265

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOSMER.

Read 1st time January 4, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

0853L.011

AN ACT

To repeal section 565.030, RSMo 2000, relating to death penalty, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 565.030, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 565.030, to read as follows:

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

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

3. If murder in the first degree is submitted and the death penalty was not waived but the trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed at which the only issue shall be the punishment to be assessed and declared. No further evidence shall be received. If the trier is a jury it shall be instructed on the law. The attorneys may then

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

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

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

31 (1) **If the trier finds by a preponderance of the evidence that the defendant is**
32 **mentally retarded; or**

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

35 [(2) If the trier does not find that the evidence in aggravation of punishment, including
36 but not limited to evidence supporting the statutory aggravating circumstances listed in
37 subsection 2 of section 565.032, warrants imposing the death sentence; or]

38 (3) **If the trier concludes that there is evidence in mitigation of punishment, including**
39 **but not limited to evidence supporting the statutory mitigating circumstances listed in subsection**
40 **3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment**
41 **found by the trier; or**

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

44 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set
45 out in writing the aggravating circumstance or circumstances listed in subsection 2 of section
46 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed
47 before the case is submitted that if it is unable to decide or agree upon the punishment the court
48 shall assess and declare the punishment at life imprisonment without eligibility for probation,
49 parole, or release except by act of the governor or death. The court shall follow the same
50 procedure as set out in this section whenever it is required to determine punishment for murder
51 in the first degree.

52 **5. Upon written agreement of the parties and with leave of the court, the issue of**

53 the defendant's mental retardation may be taken up by the court and decided prior to trial
54 without prejudicing the defendant's right to have the issue submitted to the trier of fact as
55 provided in subsection 4 of this section.

56 6. As used in this section, the terms "mental retardation" or "mentally retarded"
57 refer to a condition involving substantial limitations in general functioning characterized
58 by significantly subaverage intellectual functioning with related deficits and limitations in
59 adaptive behavior such as communication, self-care, home living, social skills, community
60 use, self-direction, health and safety, functional academics, leisure and work, which
61 condition is manifested and documented before eighteen years of age.

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