

FIRST REGULAR SESSION

HOUSE BILL NO. 516

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HUBBARD (Sponsor), CHAPPELLE-NADAL, BOYKINS, LOWE (44), MEINERS, BLAND, DAUS, BOWMAN, WALSH, LOW (39), HARRIS (110), WALTON, OXFORD, SANDERS BROOKS, CURLS, HAYWOOD, HOSKINS, FRASER, SCHOEMEHL, SPRENG, WRIGHT-JONES AND EL-AMIN (Co-sponsors).

Read 1st time February 10, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1465L.011

AN ACT

To repeal sections 546.680, 546.710, 546.720, 546.730, 546.740, 546.750, 558.019, 565.020, and 565.032, RSMo, and to enact in lieu thereof two new sections relating to 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Section A. Sections 546.680, 546.710, 546.720, 546.730, 546.740, 546.750, 558.019, 2 565.020, and 565.032, RSMo, are repealed and two new sections enacted in lieu thereof, to be 3 known as sections 558.019 and 565.020, to read as follows:

558.019. 1. This section shall not be construed to affect the powers of the governor 2 under article IV, section 7, of the Missouri Constitution. This statute shall not affect those 3 provisions of section 565.020, RSMo, section 558.018 or section 571.015, RSMo, which set 4 minimum terms of sentences, or the provisions of section 559.115, RSMo, relating to probation.

5 2. The provisions of subsections 2 to 5 of this section shall be applicable to all classes 6 of felonies except those set forth in chapter 195, RSMo, and those otherwise excluded in 7 subsection 1 of this section. For the purposes of this section, "prison commitment" means and 8 is the receipt by the department of corrections of an offender after sentencing. For purposes of 9 this section, prior prison commitments to the department of corrections shall not include 10 commitment to a regimented discipline program established pursuant to section 217.378, RSMo.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

11 Other provisions of the law to the contrary notwithstanding, any offender who has pleaded guilty
12 to or has been found guilty of a felony other than a dangerous felony as defined in section
13 556.061, RSMo, and is committed to the department of corrections shall be required to serve the
14 following minimum prison terms:

15 (1) If the offender has one previous prison commitment to the department of corrections
16 for a felony offense, the minimum prison term which the offender must serve shall be forty
17 percent of [his or her] **such** sentence or until the offender attains seventy years of age, and has
18 served at least thirty percent of the sentence imposed, whichever occurs first;

19 (2) If the offender has two previous prison commitments to the department of corrections
20 for felonies unrelated to the present offense, the minimum prison term which the offender must
21 serve shall be fifty percent of [his or her] **such** sentence or until the offender attains seventy years
22 of age, and has served at least forty percent of the sentence imposed, whichever occurs first;

23 (3) If the offender has three or more previous prison commitments to the department of
24 corrections for felonies unrelated to the present offense, the minimum prison term which the
25 offender must serve shall be eighty percent of [his or her] **such** sentence or until the offender
26 attains seventy years of age, and has served at least forty percent of the sentence imposed,
27 whichever occurs first.

28 3. Other provisions of the law to the contrary notwithstanding, any offender who has
29 pleaded guilty to or has been found guilty of a dangerous felony as defined in section 556.061,
30 RSMo, and is committed to the department of corrections shall be required to serve a minimum
31 prison term of eighty-five percent of the sentence imposed by the court or until the offender
32 attains seventy years of age, and has served at least forty percent of the sentence imposed,
33 whichever occurs first.

34 4. For the purpose of determining the minimum prison term to be served, the following
35 calculations shall apply:

36 (1) A sentence of life shall be calculated to be thirty years;

37 (2) Any sentence either alone or in the aggregate with other consecutive sentences for
38 crimes committed at or near the same time which is over seventy-five years shall be calculated
39 to be seventy-five years.

40 5. For purposes of this section, the term "minimum prison term" shall mean time
41 required to be served by the offender before [he or she] **the offender** is eligible for parole,
42 conditional release or other early release by the department of corrections. Except that the board
43 of probation and parole, in the case of consecutive sentences imposed at the same time pursuant
44 to a course of conduct constituting a common scheme or plan, shall be authorized to convert
45 consecutive sentences to concurrent sentences, when the board finds, after hearing with notice
46 to the prosecuting or circuit attorney, that the sum of the terms results in an unreasonably

47 excessive total term, taking into consideration all factors related to the crime or crimes
48 committed and the sentences received by others similarly situated.

49 6. (1) A sentencing advisory commission is hereby created to consist of eleven
50 members. One member shall be appointed by the speaker of the house. One member shall be
51 appointed by the president pro tem of the senate. One member shall be the director of the
52 department of corrections. Six members shall be appointed by and serve at the pleasure of the
53 governor from among the following: the public defender commission; private citizens; a private
54 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members
55 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.
56 All members shall be appointed to a four-year term. All members of the sentencing commission
57 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory
58 commission at the pleasure of the governor.

59 (2) The commission shall study sentencing practices in the circuit courts throughout the
60 state for the purpose of determining whether and to what extent disparities exist among the
61 various circuit courts with respect to the length of sentences imposed and the use of probation
62 for offenders convicted of the same or similar crimes and with similar criminal histories. [The
63 commission shall also study and examine whether and to what extent sentencing disparity among
64 economic and social classes exists in relation to the sentence of death and if so, the reasons
65 therefor sentences are comparable to other states, if the length of the sentence is appropriate, and
66 the rate of rehabilitation based on sentence.] It shall compile statistics, examine cases, draw
67 conclusions, and perform other duties relevant to the research and investigation of disparities in
68 [death penalty] sentencing among economic and social classes.

69 (3) The commission shall establish a system of recommended sentences, within the
70 statutory minimum and maximum sentences provided by law for each felony committed under
71 the laws of this state. This system of recommended sentences shall be distributed to all
72 sentencing courts within the state of Missouri. The recommended sentence for each crime shall
73 take into account, but not be limited to, the following factors:

74 (a) The nature and severity of each offense;

75 (b) The record of prior offenses by the offender;

76 (c) The data gathered by the commission showing the duration and nature of sentences
77 imposed for each crime; and

78 (d) The resources of the department of corrections and other authorities to carry out the
79 punishments that are imposed.

80 (4) The commission shall study alternative sentences, prison work programs, work
81 release, home-based incarceration, probation and parole options, and any other programs and
82 report the feasibility of these options in Missouri.

83 (5) The [commission shall publish and distribute its recommendations on or before July
84 1, 2004. The commission shall study the implementation and use of the recommendations until
85 July 1, 2005, and return a report to the governor, the speaker of the house of representatives, and
86 the president pro tem of the senate. Following the July 1, 2005, report, the] commission shall
87 revise the recommended sentences every two years.

88 (6) The governor shall select a chairperson who shall call meetings of the commission
89 as required or permitted pursuant to the purpose of the sentencing commission.

90 (7) The members of the commission shall not receive compensation for their duties on
91 the commission, but shall be reimbursed for actual and necessary expenses incurred in the
92 performance of these duties and for which they are not reimbursed by reason of their other paid
93 positions.

94 (8) The circuit and associate circuit courts of this state, the office of the state courts
95 administrator, the department of public safety, and the department of corrections shall cooperate
96 with the commission by providing information or access to information needed by the
97 commission. The office of the state courts administrator will provide needed staffing resources.

98 7. Courts shall retain discretion to lower or exceed the sentence recommended by the
99 commission as otherwise allowable by law, and to order restorative justice methods, when
100 applicable.

101 8. If the imposition or execution of a sentence is suspended, the court may order any or
102 all of the following restorative justice methods, or any other method that the court finds just or
103 appropriate:

104 (1) Restitution to any victim or a statutorily created fund for costs incurred as a result
105 of the offender's actions;

106 (2) Offender treatment programs;

107 (3) Mandatory community service;

108 (4) Work release programs in local facilities; and

109 (5) Community-based residential and nonresidential programs.

110 9. The provisions of this section shall apply only to offenses occurring on or after August
111 28, 2003.

112 10. Pursuant to subdivision (1) of subsection 8 of this section, the court may order the
113 assessment and payment of a designated amount of restitution to a county law enforcement
114 restitution fund established by the county commission pursuant to section 50.565, RSMo. Such
115 contribution shall not exceed three hundred dollars for any charged offense. Any restitution
116 moneys deposited into the county law enforcement restitution fund pursuant to this section shall
117 only be expended pursuant to the provisions of section 50.565, RSMo.

118 11. A judge may order payment to a restitution fund only if such fund had been created
119 by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall
120 not have any direct supervisory authority or administrative control over any fund to which the
121 judge is ordering a defendant to make payment.

122 12. A defendant who fails to make a payment to a county law enforcement restitution
123 fund may not have his or her probation revoked solely for failing to make such payment unless
124 the judge, after evidentiary hearing, makes a finding supported by a preponderance of the
125 evidence that the defendant either willfully refused to make the payment or that the defendant
126 willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the
127 resources to pay.

 565.020. 1. A person commits the crime of murder in the first degree if [he] **such**
2 **person** knowingly causes the death of another person after deliberation upon the matter.

3 2. Murder in the first degree is a class A felony, and the punishment shall be [either death
4 or] imprisonment for life without eligibility for probation or parole, or release except by act of
5 the governor[; except that, if a person has not reached his sixteenth birthday at the time of the
6 commission of the crime, the punishment shall be imprisonment for life without eligibility for
7 probation or parole, or release except by act of the governor].

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

10 [546.710. Upon such convicted offender being brought before the court,
2 they shall proceed to inquire into the facts, and if no legal reasons exist against
3 the execution of sentence, such court shall issue a warrant to the director of the
4 department of corrections, for the execution of the prisoner at the time therein
5 specified, which execution shall be obeyed by the director accordingly.]
6

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

7 execution the death penalty by means of the administration of lethal gas or by
8 means of the administration of lethal injection.]
9

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

2 [546.740. The chief administrative officer of the correctional center, or
3 his duly appointed representative shall be present at the execution and the
4 director of the department of corrections shall invite the presence of the attorney
5 general of the state, and at least eight reputable citizens, to be selected by him;
6 and he shall at the request of the defendant, permit such clergy or religious
7 leaders, not exceeding two, as the defendant may name, and any person, other
8 than another incarcerated offender, relatives or friends, not to exceed five, to be
9 present at the execution, together with such peace officers as he may think
10 expedient, to witness the execution; 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 officer of the
3 correctional facility shall make a return upon the death warrant to the court by
4 which the judgment was rendered, showing the time, mode and manner in which
5 it was executed.]

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

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

8 (2) If a statutory aggravating circumstance or circumstances is proven
9 beyond a reasonable doubt, whether the evidence as a whole justifies a sentence
10 of death or a sentence of life imprisonment without eligibility for probation,
11 parole, or release except by act of the governor. In determining the issues
12 enumerated in subdivisions (1) and (2) of this subsection, the trier shall consider
13 all evidence which it finds to be in aggravation or mitigation of punishment,
14 including evidence received during the first stage of the trial and evidence
15 supporting any of the statutory aggravating or mitigating circumstances set out
16 in subsections 2 and 3 of this section. If the trier is a jury, it shall not be
17 instructed upon any specific evidence which may be in aggravation or mitigation
18 of punishment, but shall be instructed that each juror shall consider any evidence
19 which he considers to be aggravating or mitigating.

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

- 21 (1) The offense was committed by a person with a prior record of
22 conviction for murder in the first degree, or the offense was committed by a
23 person who has one or more serious assaultive criminal convictions;
- 24 (2) The murder in the first degree offense was committed while the
25 offender was engaged in the commission or attempted commission of another
26 unlawful homicide;
- 27 (3) The offender by his act of murder in the first degree knowingly
28 created a great risk of death to more than one person by means of a weapon or
29 device which would normally be hazardous to the lives of more than one person;
- 30 (4) The offender committed the offense of murder in the first degree for
31 himself or another, for the purpose of receiving money or any other thing of
32 monetary value from the victim of the murder or another;
- 33 (5) The murder in the first degree was committed against a judicial
34 officer, former judicial officer, prosecuting attorney or former prosecuting
35 attorney, circuit attorney or former circuit attorney, assistant prosecuting attorney
36 or former assistant prosecuting attorney, assistant circuit attorney or former
37 assistant circuit attorney, peace officer or former peace officer, elected official or
38 former elected official during or because of the exercise of his official duty;
- 39 (6) The offender caused or directed another to commit murder in the first
40 degree or committed murder in the first degree as an agent or employee of
41 another person;
- 42 (7) The murder in the first degree was outrageously or wantonly vile,
43 horrible or inhuman in that it involved torture, or depravity of mind;
- 44 (8) The murder in the first degree was committed against any peace
45 officer, or fireman while engaged in the performance of his official duty;
- 46 (9) The murder in the first degree was committed by a person in, or who
47 has escaped from, the lawful custody of a peace officer or place of lawful
48 confinement;
- 49 (10) The murder in the first degree was committed for the purpose of
50 avoiding, interfering with, or preventing a lawful arrest or custody in a place of
51 lawful confinement, of himself or another;
- 52 (11) The murder in the first degree was committed while the defendant
53 was engaged in the perpetration or was aiding or encouraging another person to
54 perpetrate or attempt to perpetrate a felony of any degree of rape, sodomy,
55 burglary, robbery, kidnapping, or any felony offense in chapter 195, RSMo;
- 56 (12) The murdered individual was a witness or potential witness in any
57 past or pending investigation or past or pending prosecution, and was killed as
58 a result of his status as a witness or potential witness;
- 59 (13) The murdered individual was an employee of an institution or
60 facility of the department of corrections of this state or local correction agency
61 and was killed in the course of performing his official duties, or the murdered
62 individual was an inmate of such institution or facility;

- 63 (14) The murdered individual was killed as a result of the hijacking of an
- 64 airplane, train, ship, bus or other public conveyance;
- 65 (15) The murder was committed for the purpose of concealing or
- 66 attempting to conceal any felony offense defined in chapter 195, RSMo;
- 67 (16) The murder was committed for the purpose of causing or attempting
- 68 to cause a person to refrain from initiating or aiding in the prosecution of a felony
- 69 offense defined in chapter 195, RSMo;
- 70 (17) The murder was committed during the commission of a crime which
- 71 is part of a pattern of criminal street gang activity as defined in section 578.421.
- 72 3. Statutory mitigating circumstances shall include the following:
- 73 (1) The defendant has no significant history of prior criminal activity;
- 74 (2) The murder in the first degree was committed while the defendant
- 75 was under the influence of extreme mental or emotional disturbance;
- 76 (3) The victim was a participant in the defendant's conduct or consented
- 77 to the act;
- 78 (4) The defendant was an accomplice in the murder in the first degree
- 79 committed by another person and his participation was relatively minor;
- 80 (5) The defendant acted under extreme duress or under the substantial
- 81 domination of another person;
- 82 (6) The capacity of the defendant to appreciate the criminality of his
- 83 conduct or to conform his conduct to the requirements of law was substantially
- 84 impaired;
- 85 (7) The age of the defendant at the time of the crime.]