

SECOND REGULAR SESSION

HOUSE BILL NO. 1791

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HUBBARD (Sponsor), EL-AMIN, CHAPPELLE NADAL, JOHNSON (61), HOSKINS, HAYWOOD, WALSH, MEINERS, CURLS, FRASER, BOYKINS, BOWMAN, LOWE (44), DAUS, LOW (39), HUGHES, SPRENG, WALTON, BOGETTO, SCHOEMEHL, HARRIS (110), WRIGHT-JONES, OXFORD AND BLAND (Co-sponsors).

Read 1st time February 15, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5037L.01I

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Section A. Sections 546.680, 546.710, 546.720, 546.730, 546.740, 546.750, 558.019, 2 565.020, and 565.032, RSMo, are repealed and two new sections enacted in lieu thereof, to be 3 known as sections 558.019 and 565.020, to read as follows: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. 11 Other provisions of the law to the contrary notwithstanding, any offender who has pleaded guilty

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.

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.

43 6. (1) A sentencing advisory commission is hereby created to consist of eleven
44 members. One member shall be appointed by the speaker of the house. One member shall be
45 appointed by the president pro tem of the senate. One member shall be the director of the
46 department of corrections. Six members shall be appointed by and serve at the pleasure of the
47 governor from among the following: the public defender commission; private citizens; a private

48 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members
49 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.
50 All members shall be appointed to a four-year term. All members of the sentencing commission
51 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory
52 commission at the pleasure of the governor.

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

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

- 68 (a) The nature and severity of each offense;
- 69 (b) The record of prior offenses by the offender;
- 70 (c) The data gathered by the commission showing the duration and nature of sentences
71 imposed for each crime; and
- 72 (d) The resources of the department of corrections and other authorities to carry out the
73 punishments that are imposed.

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

77 (5) The [commission shall publish and distribute its recommendations on or before July
78 1, 2004. The commission shall study the implementation and use of the recommendations until
79 July 1, 2005, and return a report to the governor, the speaker of the house of representatives, and
80 the president pro tem of the senate. Following the July 1, 2005, report, the] commission shall
81 revise the recommended sentences every two years.

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

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

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

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

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

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

100 (2) Offender treatment programs;

101 (3) Mandatory community service;

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

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

104 9. The provisions of this section shall apply only to offenses occurring on or after August
105 28, 2003.

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

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

116 12. A defendant who fails to make a payment to a county law enforcement restitution
117 fund may not have his or her probation revoked solely for failing to make such payment unless
118 the judge, after evidentiary hearing, makes a finding supported by a preponderance of the
119 evidence that the defendant either willfully refused to make the payment or that the defendant

120 willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the
121 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

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

[546.740. The chief administrative officer of the correctional center, or
2 his duly appointed representative shall be present at the execution and the
3 director of the department of corrections shall invite the presence of the attorney

4 general of the state, and at least eight reputable citizens, to be selected by him;
5 and he shall at the request of the defendant, permit such clergy or religious
6 leaders, not exceeding two, as the defendant may name, and any person, other
7 than another incarcerated offender, relatives or friends, not to exceed five, to be
8 present at the execution, together with such peace officers as he may think
9 expedient, to witness the execution; but no person under twenty-one years of age
10 shall be allowed to witness the execution.]
11

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
21 offense shall be limited to the following:

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

25 (2) The murder in the first degree offense was committed while the
26 offender was engaged in the commission or attempted commission of another
27 unlawful homicide;

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

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

(5) The murder in the first degree was committed against a judicial officer, former judicial officer, prosecuting attorney or former prosecuting attorney, circuit attorney or former circuit attorney, assistant prosecuting attorney or former assistant prosecuting attorney, assistant circuit attorney or former assistant circuit attorney, peace officer or former peace officer, elected official or former elected official during or because of the exercise of his official duty;

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

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

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

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

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

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

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

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

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

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

(16) The murder was committed for the purpose of causing or attempting to cause a person to refrain from initiating or aiding in the prosecution of a felony offense defined in chapter 195, RSMo;

(17) The murder was committed during the commission of a crime which is part of a pattern of criminal street gang activity as defined in section 578.421.

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.]

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