

FIRST REGULAR SESSION

HOUSE BILL NO. 644

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WIELAND (Sponsor), BERRY, KELLY (45), MCGAUGH, LANT, STREAM, HURST, MESSENGER, MCCANN BEATTY, PACE, WALTON GRAY, CARPENTER, SWEARINGEN, WEBBER, RIZZO, MEREDITH, NORR, MORGAN, SCHUPP, LAFAVER, ELLINGER, MCNEIL, HUMMEL, SMITH (85), SWAN, WEBB, ENGLISH, HUBBARD, KIRKTON, MONTECILLO, MITTEN, BURNS, MAY, HODGES, MCDONALD, DUNN, PIERSON, ROWDEN, ENGLUND, ELLINGTON AND GARDNER (Co-sponsors).

1363H.01I

D. ADAM CRUMBLISS, Chief Clerk

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, 565.004, 565.006, 565.020, 565.030, 565.032, 565.035, and 565.040, RSMo, and to enact in lieu thereof four 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, 546.720, 546.730, 546.740, 2 546.750, 546.800, 546.810, 546.820, 565.004, 565.006, 565.020, 565.030, 565.032, 565.035, and 3 565.040, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as 4 sections 565.004, 565.006, 565.020, and 565.040, to read as follows:

565.004. 1. Each homicide offense which is lawfully joined in the same indictment or 2 information together with any homicide offense or offense other than a homicide shall be 3 charged together with such offense in separate counts. A count charging any offense of homicide 4 may only be charged and tried together with one or more counts of any other homicide or offense 5 other than a homicide as provided in subsection 2 of section 545.140. Except as provided in 6 subsections 2, 3, and 4 of this section, no murder in the first degree offense may be tried together 7 with any offense other than murder in the first degree. In the event of a joinder of homicide 8 offenses, all offenses charged which are supported by the evidence in the case, together with all

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.

9 proper lesser offenses under section 565.025, shall, when requested by one of the parties or the
10 court, be submitted to the jury or, in a jury-waived trial, considered by the judge.

11 2. A count charging any offense of homicide of a particular individual may be joined in
12 an indictment or information and tried with one or more counts charging alternatively any other
13 homicide or offense other than a homicide committed against that individual. The state shall not
14 be required to make an election as to the alternative count on which it will proceed. This
15 subsection in no way limits the right to try in the conjunctive, where they are properly joined
16 under subsection 1 of this section, either separate offenses other than murder in the first degree
17 or separate offenses of murder in the first degree committed against different individuals.

18 3. When a defendant has been charged and proven before trial to be a prior offender
19 pursuant to chapter 558 so that the judge shall assess punishment and not a jury for an offense
20 other than murder in the first degree, that offense may be tried and submitted to the trier together
21 with any murder in the first degree charge with which it is lawfully joined. In such case the
22 judge will assess punishment on any offense joined with a murder in the first degree charge
23 according to law and, when the trier is a jury, it shall be instructed upon punishment on the
24 charge of murder in the first degree in accordance with section 565.030.

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

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

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

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

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

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].

565.040. [1. In the event that the death penalty provided in this chapter is held to be
2 unconstitutional,] Any person convicted of murder in the first degree [shall be] **and** sentenced
3 by the court to **death prior to August 28, 2013, shall be sentenced by the court to** life
4 imprisonment without eligibility for probation, parole, or release except by act of the governor[,
5 with the exception that when a specific aggravating circumstance found in a case is held to be
6 unconstitutional or invalid for another reason, the supreme court of Missouri is further authorized
7 to remand the case for resentencing or retrial of the punishment pursuant to subsection 5 of
8 section 565.036.

9 2. In the event that any death sentence imposed pursuant to this chapter is held to be
10 unconstitutional, the trial court which previously sentenced the defendant to death shall cause
11 the defendant to be brought before the court and shall sentence the defendant to life
12 imprisonment without eligibility for probation, parole, or release except by act of the governor,
13 with the exception that when a specific aggravating circumstance found in a case is held to be
14 inapplicable, unconstitutional or invalid for another reason, the supreme court of Missouri is
15 further authorized to remand the case for retrial of the punishment pursuant to subsection 5 of
16 section 565.035].

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

[546.700. Whenever, for any reason, any convict sentenced to the
2 punishment of death shall not have been executed pursuant to such sentence, and
3 the cause shall stand in full force, the supreme court, or the court of the county
4 in which the conviction was had, on the application of the prosecuting attorney,
5 shall issue a writ of habeas corpus to bring such convict before the court; or if he

6 be at large, a warrant for his apprehension may be issued by such court, or any
7 judge thereof.]
8

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

2 [546.720. 1. The manner of inflicting the punishment of death shall be
3 by the administration of lethal gas or by means of the administration of lethal
4 injection. And for such purpose the director of the department of corrections is
5 hereby authorized and directed to provide a suitable and efficient room or place,
6 enclosed from public view, within the walls of a correctional facility of the
7 department of corrections, and the necessary appliances for carrying into
8 execution the death penalty by means of the administration of lethal gas or by
9 means of the administration of lethal injection.

2 2. The director of the department of corrections shall select an execution
3 team which shall consist of those persons who administer lethal gas or lethal
4 chemicals and those persons, such as medical personnel, who provide direct
5 support for the administration of lethal gas or lethal chemicals. The identities of
6 members of the execution team, as defined in the execution protocol of the
7 department of corrections, shall be kept confidential. Notwithstanding any
8 provision of law to the contrary, any portion of a record that could identify a
9 person as being a current or former member of an execution team shall be
10 privileged and shall not be subject to discovery, subpoena, or other means of
11 legal compulsion for disclosure to any person or entity, the remainder of such
12 record shall not be privileged or closed unless protected from disclosure by law.
13 The section of an execution protocol that directly relates to the administration of
14 lethal gas or lethal chemicals is an open record, the remainder of any execution
15 protocol of the department of corrections is a closed record.

23 3. A person may not, without the approval of the director of the
24 department of corrections, knowingly disclose the identity of a current or former
25 member of an execution team or disclose a record knowing that it could identify
26 a person as being a current or former member of an execution team. Any person
27 whose identity is disclosed in violation of this section shall:

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

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

31 (a) Actual damages; and

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

33 4. Notwithstanding any provision of law to the contrary, if a member of
34 the execution team is licensed by a board or department, the licensing board or

35 department shall not censure, reprimand, suspend, revoke, or take any other
36 disciplinary action against the person's license because of his or her participation
37 in a lawful execution. All members of the execution team are entitled to
38 coverage under the state legal expense fund established by section 105.711 for
39 conduct of such execution team member arising out of and performed in
40 connection with his or her official duties on behalf of the state or any agency of
41 the state, provided that moneys in this fund shall not be available for payment of
42 claims under chapter 287.]

43

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.]

4

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
11 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.]

5

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

9

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

5

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

[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.

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 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 crime 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 mentally retarded; 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 mental retardation 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 "mental retardation" or "mentally retarded" 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, functional academics, leisure and work, which conditions are manifested and documented before eighteen years of age.

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

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

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

(2) If a statutory aggravating circumstance or circumstances is proven beyond a reasonable doubt, whether the evidence as a whole justifies a sentence of death or a sentence of life imprisonment without eligibility for probation,

10 parole, or release except by act of the governor. In determining the issues
11 enumerated in subdivisions (1) and (2) of this subsection, the trier shall consider
12 all evidence which it finds to be in aggravation or mitigation of punishment,
13 including evidence received during the first stage of the trial and evidence
14 supporting any of the statutory aggravating or mitigating circumstances set out
15 in subsections 2 and 3 of this section. If the trier is a jury, it shall not be
16 instructed upon any specific evidence which may be in aggravation or mitigation
17 of punishment, but shall be instructed that each juror shall consider any evidence
18 which he considers to be aggravating or mitigating.

19 2. Statutory aggravating circumstances for a murder in the first degree
20 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;

(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;

(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;

(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;

(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:

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

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

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

(4) The defendant was an accomplice in the murder in the first degree committed by another person and his participation was relatively minor;

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

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

(7) The age of the defendant at the time of the crime.]

[565.035. 1. Whenever the death penalty is imposed in any case, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the supreme court of Missouri. The circuit clerk of the court trying the case, within ten days after receiving the transcript, shall transmit the entire record and transcript to the supreme court together with a notice prepared by the circuit clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment,

9 the offense, and the punishment prescribed. The report by the judge shall be in
10 the form of a standard questionnaire prepared and supplied by the supreme court
11 of Missouri.

12 2. The supreme court of Missouri shall consider the punishment as well
13 as any errors enumerated by way of appeal.

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

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

17 (2) Whether the evidence supports the jury's or judge's finding of a
18 statutory aggravating circumstance as enumerated in subsection 2 of section
19 565.032 and any other circumstance found;

20 (3) Whether the sentence of death is excessive or disproportionate to the
21 penalty imposed in similar cases, considering both the crime, the strength of the
22 evidence and the defendant.

23 4. Both the defendant and the state shall have the right to submit briefs
24 within the time provided by the supreme court, and to present oral argument to
25 the supreme court.

26 5. The supreme court shall include in its decision a reference to those
27 similar cases which it took into consideration. In addition to its authority
28 regarding correction of errors, the supreme court, with regard to review of death
29 sentences, shall be authorized to:

30 (1) Affirm the sentence of death; or

31 (2) Set the sentence aside and resentence the defendant to life
32 imprisonment without eligibility for probation, parole, or release except by act
33 of the governor; or

34 (3) Set the sentence aside and remand the case for retrial of the
35 punishment hearing. A new jury shall be selected or a jury may be waived by
36 agreement of both parties and then the punishment trial shall proceed in
37 accordance with this chapter, with the exception that the evidence of the guilty
38 verdict shall be admissible in the new trial together with the official transcript of
39 any testimony and evidence properly admitted in each stage of the original trial
40 where relevant to determine punishment.

41 6. There shall be an assistant to the supreme court, who shall be an
42 attorney appointed by the supreme court and who shall serve at the pleasure of
43 the court. The court shall accumulate the records of all cases in which the
44 sentence of death or life imprisonment without probation or parole was imposed
45 after May 26, 1977, or such earlier date as the court may deem appropriate. The
46 assistant shall provide the court with whatever extracted information the court
47 desires with respect thereto, including but not limited to a synopsis or brief of the
48 facts in the record concerning the crime and the defendant. The court shall be
49 authorized to employ an appropriate staff, within the limits of appropriations
50 made for that purpose, and such methods to compile such data as are deemed by
51 the supreme court to be appropriate and relevant to the statutory questions

52 concerning the validity of the sentence. The office of the assistant to the supreme
53 court shall be attached to the office of the clerk of the supreme court for
54 administrative purposes.

55 7. In addition to the mandatory sentence review, there shall be a right of
56 direct appeal of the conviction to the supreme court of Missouri. This right of
57 appeal may be waived by the defendant. If an appeal is taken, the appeal and the
58 sentence review shall be consolidated for consideration. The court shall render
59 its decision on legal errors enumerated, the factual substantiation of the verdict,
60 and the validity of the sentence.]

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