

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By \_\_\_\_\_

1 AMEND House Committee Substitute for House Bill No. 1231, Pages 48-49, Section 546.720, Lines  
2 1-44, by deleting all of said lines.

3  
4 Further amend said bill, Page 49, Section 546.720, Line 44, by inserting immediately after said line  
5 the following:

6  
7 "565.004. 1. Each homicide offense which is lawfully joined in the same indictment or  
8 information together with any homicide offense or offense other than a homicide shall be charged  
9 together with such offense in separate counts. A count charging any offense of homicide may only be  
10 charged and tried together with one or more counts of any other homicide or offense other than a  
11 homicide as provided in subsection 2 of section 545.140. Except as provided in subsections 2, 3, and  
12 4 of this section, no murder in the first degree offense may be tried together with any offense other  
13 than murder in the first degree. In the event of a joinder of homicide offenses, all offenses charged  
14 which are supported by the evidence in the case, together with all proper lesser offenses under  
15 section 565.025, shall, when requested by one of the parties or the court, be submitted to the jury or,  
16 in a jury-waived trial, considered by the judge.

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

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

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

34 565.006. 1. At any time before the commencement of the trial of a homicide offense, the  
35 defendant may, with the assent of the court, waive a trial by jury and agree to submit all issues in the  
36 case to the court, whose finding shall have the force and effect of a verdict of a jury. Such a waiver

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 must include a waiver of a trial by jury of all issues and offenses charged in the case, including the  
2 punishment to be assessed and imposed if the defendant is found guilty.

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

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

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

11 565.020. 1. A person commits the crime of murder in the first degree if [he] such person  
12 knowingly causes the death of another person after deliberation upon the matter.

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

18 565.040. [1. In the event that the death penalty provided in this chapter is held to be  
19 unconstitutional,] Any person convicted of murder in the first degree [shall be] and sentenced by the  
20 court to death prior to August 28, 2014, shall be sentenced by the court to life imprisonment without  
21 eligibility for probation, parole, or release except by act of the governor[, with the exception that  
22 when a specific aggravating circumstance found in a case is held to be unconstitutional or invalid for  
23 another reason, the supreme court of Missouri is further authorized to remand the case for  
24 resentencing or retrial of the punishment pursuant to subsection 5 of section 565.036.

25 2. In the event that any death sentence imposed pursuant to this chapter is held to be  
26 unconstitutional, the trial court which previously sentenced the defendant to death shall cause the  
27 defendant to be brought before the court and shall sentence the defendant to life imprisonment  
28 without eligibility for probation, parole, or release except by act of the governor, with the exception  
29 that when a specific aggravating circumstance found in a case is held to be inapplicable,  
30 unconstitutional or invalid for another reason, the supreme court of Missouri is further authorized to  
31 remand the case for retrial of the punishment pursuant to subsection 5 of section 565.035]."; and  
32

33 Further amend said bill, Page 53, Section 632.520, Line 19, by inserting after all of said line the  
34 following:  
35

36 "[546.680. When judgment of death is rendered by any court of competent jurisdiction, a  
37 warrant signed by the judge and attested by the clerk under the seal of the court must be drawn and  
38 delivered to the sheriff. It must state the conviction and judgment and appoint a day on which the  
39 judgment must be executed, which must not be less than thirty nor more than sixty days from the  
40 date of judgment, and must direct the sheriff to deliver the defendant, at a time specified in said  
41 order, not more than ten days from the date of judgment, to the chief administrative officer of a  
42 correctional facility of the department of corrections, for execution.]  
43

44 [546.690. The judge of a court at which a conviction is had must,  
45 immediately after the conviction, transmit to the governor of the state, by mail  
46 or otherwise, a statement of the conviction and judgment.]  
47

48 [546.700. Whenever, for any reason, any convict sentenced to the punishment

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

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

13  
14 [546.730. A judgment of death must be executed within a correctional center  
15 of the department of corrections; and such execution shall be under the  
16 supervision and direction of the director of the department of corrections.]

17  
18 [546.740. The chief administrative officer of the correctional center, or his  
19 duly appointed representative shall be present at the execution and the director  
20 of the department of corrections shall invite the presence of the attorney  
21 general of the state, and at least eight reputable citizens, to be selected by him;  
22 and he shall at the request of the defendant, permit such clergy or religious  
23 leaders, not exceeding two, as the defendant may name, and any person, other  
24 than another incarcerated offender, relatives or friends, not to exceed five, to  
25 be present at the execution, together with such peace officers as he may think  
26 expedient, to witness the execution; but no person under twenty-one years of  
27 age shall be allowed to witness the execution.]

28  
29 [546.750. After the execution the chief administrative officer of the  
30 correctional facility shall make a return upon the death warrant to the court by  
31 which the judgment was rendered, showing the time, mode and manner in  
32 which it was executed.]

33  
34 [546.800. If, after any female convict shall be sentenced to the punishment of  
35 death, the officer having charge of her person shall have reason to suspect that  
36 she is pregnant, he shall in like manner summon a jury of six persons, not less  
37 than three of whom shall be physicians, and shall give notice thereof to the  
38 prosecuting attorney of the county where such criminal proceedings  
39 originated, or to the circuit attorney of the city of St. Louis, if such criminal  
40 proceedings originated in that city, who shall attend, and the proceedings shall  
41 be had as provided.]

42  
43 [546.810. The inquisition shall be signed by the jury and the officer in charge  
44 of such convict, and if it appear that such female convict is pregnant with  
45 child, her execution shall be suspended and the inquisition shall be transmitted  
46 to the governor.]

47  
48 [546.820. Whenever the governor shall be satisfied that the cause of such

1 suspension no longer exists, he shall issue his warrant, appointing a day for  
2 the execution of such convict, pursuant to her sentence; or he may, at his  
3 discretion, commute her punishment to imprisonment in the penitentiary for  
4 life.]

5  
6 [565.030. 1. Where murder in the first degree is charged but not submitted or  
7 where the state waives the death penalty, the submission to the trier and all  
8 subsequent proceedings in the case shall proceed as in all other criminal cases  
9 with a single stage trial in which guilt and punishment are submitted together.

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

19 3. If murder in the first degree is submitted and the death penalty was not  
20 waived but the trier finds the defendant guilty of a lesser homicide, a second  
21 stage of the trial shall proceed at which the only issue shall be the punishment  
22 to be assessed and declared. No further evidence shall be received. If the trier  
23 is a jury it shall be instructed on the law. The attorneys may then argue as in  
24 other criminal cases the issue of punishment, after which the trier shall assess  
25 and declare the punishment as in all other criminal cases.

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

41 (1) If the trier finds by a preponderance of the evidence that the defendant  
42 is mentally retarded; or

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

46 (3) If the trier concludes that there is evidence in mitigation of punishment,  
47 including but not limited to evidence supporting the statutory mitigating  
48 circumstances listed in subsection 3 of section 565.032, which is sufficient to

1 outweigh the evidence in aggravation of punishment found by the trier; or  
2 (4) If the trier decides under all of the circumstances not to assess and declare  
3 the punishment at death. If the trier is a jury it shall be so instructed.  
4

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

14 5. Upon written agreement of the parties and with leave of the court, the issue  
15 of the defendant's mental retardation may be taken up by the court and decided  
16 prior to trial without prejudicing the defendant's right to have the issue  
17 submitted to the trier of fact as provided in subsection 4 of this section.

18 6. As used in this section, the terms "mental retardation" or "mentally  
19 retarded" refer to a condition involving substantial limitations in general  
20 functioning characterized by significantly subaverage intellectual functioning  
21 with continual extensive related deficits and limitations in two or more  
22 adaptive behaviors such as communication, self-care, home living, social  
23 skills, community use, self-direction, health and safety, functional academics,  
24 leisure and work, which conditions are manifested and documented before  
25 eighteen years of age.

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

29 [565.032. 1. In all cases of murder in the first degree for which the death  
30 penalty is authorized, the judge in a jury-waived trial shall consider, or he  
31 shall include in his instructions to the jury for it to consider:

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

35 (2) If a statutory aggravating circumstance or circumstances is proven beyond  
36 a reasonable doubt, whether the evidence as a whole justifies a sentence of  
37 death or a sentence of life imprisonment without eligibility for probation,  
38 parole, or release except by act of the governor. In determining the issues  
39 enumerated in subdivisions (1) and (2) of this subsection, the trier shall  
40 consider all evidence which it finds to be in aggravation or mitigation of  
41 punishment, including evidence received during the first stage of the trial and  
42 evidence supporting any of the statutory aggravating or mitigating  
43 circumstances set out in subsections 2 and 3 of this section. If the trier is a  
44 jury, it shall not be instructed upon any specific evidence which may be in  
45 aggravation or mitigation of punishment, but shall be instructed that each  
46 juror shall consider any evidence which he considers to be aggravating or  
47 mitigating.

48 2. Statutory aggravating circumstances for a murder in the first degree

1 offense shall be limited to the following:

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

5 (2) The murder in the first degree offense was committed while the offender  
6 was engaged in the commission or attempted commission of another unlawful  
7 homicide;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

19 (7) The age of the defendant at the time of the crime.]  
20

21 [565.035. 1. Whenever the death penalty is imposed in any case, and upon  
22 the judgment becoming final in the trial court, the sentence shall be reviewed  
23 on the record by the supreme court of Missouri. The circuit clerk of the court  
24 trying the case, within ten days after receiving the transcript, shall transmit the  
25 entire record and transcript to the supreme court together with a notice  
26 prepared by the circuit clerk and a report prepared by the trial judge. The  
27 notice shall set forth the title and docket number of the case, the name of the  
28 defendant and the name and address of his attorney, a narrative statement of  
29 the judgment, the offense, and the punishment prescribed. The report by the  
30 judge shall be in the form of a standard questionnaire prepared and supplied  
31 by the supreme court of Missouri.

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

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

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

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

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

43 4. Both the defendant and the state shall have the right to submit briefs within  
44 the time provided by the supreme court, and to present oral argument to the  
45 supreme court.

46 5. The supreme court shall include in its decision a reference to those similar  
47 cases which it took into consideration. In addition to its authority regarding  
48 correction of errors, the supreme court, with regard to review of death

1 sentences, shall be authorized to:

2 (1) Affirm the sentence of death; or

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

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

13 6. There shall be an assistant to the supreme court, who shall be an attorney  
14 appointed by the supreme court and who shall serve at the pleasure of the  
15 court. The court shall accumulate the records of all cases in which the  
16 sentence of death or life imprisonment without probation or parole was  
17 imposed after May 26, 1977, or such earlier date as the court may deem  
18 appropriate. The assistant shall provide the court with whatever extracted  
19 information the court desires with respect thereto, including but not limited to  
20 a synopsis or brief of the facts in the record concerning the crime and the  
21 defendant. The court shall be authorized to employ an appropriate staff,  
22 within the limits of appropriations made for that purpose, and such methods to  
23 compile such data as are deemed by the supreme court to be appropriate and  
24 relevant to the statutory questions concerning the validity of the sentence. The  
25 office of the assistant to the supreme court shall be attached to the office of the  
26 clerk of the supreme court for administrative purposes.

27 7. In addition to the mandatory sentence review, there shall be a right of direct  
28 appeal of the conviction to the supreme court of Missouri. This right of  
29 appeal may be waived by the defendant. If an appeal is taken, the appeal and  
30 the sentence review shall be consolidated for consideration. The court shall  
31 render its decision on legal errors enumerated, the factual substantiation of the  
32 verdict, and the validity of the sentence.]; and  
33

34 Further amend said bill by amending the title, enacting clause, and intersectional references  
35 accordingly.