

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1560
97TH GENERAL ASSEMBLY

5462H.04C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 556.061, 565.020, 565.030, 565.032, and 565.040, RSMo, and to enact in lieu thereof five new sections relating to first degree murder, with penalty provisions, an emergency clause for certain sections, and an effective date for a certain section.

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

Section A. Sections 556.061, 565.020, 565.030, 565.032, and 565.040, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 556.061, 565.020,
3 565.030, 565.032, and 565.040, to read as follows:

556.061. In this code, unless the context requires a different definition, the following
2 shall apply:

3 (1) "Affirmative defense" has the meaning specified in section 556.056;

4 (2) "Burden of injecting the issue" has the meaning specified in section 556.051;

5 (3) "Commercial film and photographic print processor", any person who develops
6 exposed photographic film into negatives, slides or prints, or who makes prints from negatives
7 or slides, for compensation. The term commercial film and photographic print processor shall
8 include all employees of such persons but shall not include a person who develops film or makes
9 prints for a public agency;

10 (4) "Confinement":

11 (a) A person is in confinement when such person is held in a place of confinement
12 pursuant to arrest or order of a court, and remains in confinement until:

13 a. A court orders the person's release; or

14 b. The person is released on bail, bond, or recognizance, personal or otherwise; or

15 c. A public servant having the legal power and duty to confine the person authorizes his
16 release without guard and without condition that he return to confinement;

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.

17 (b) A person is not in confinement if:

18 a. The person is on probation or parole, temporary or otherwise; or

19 b. The person is under sentence to serve a term of confinement which is not continuous,
20 or is serving a sentence under a work-release program, and in either such case is not being held
21 in a place of confinement or is not being held under guard by a person having the legal power
22 and duty to transport the person to or from a place of confinement;

23 (5) "Consent": consent or lack of consent may be expressed or implied. Assent does not
24 constitute consent if:

25 (a) It is given by a person who lacks the mental capacity to authorize the conduct charged
26 to constitute the offense and such mental incapacity is manifest or known to the actor; or

27 (b) It is given by a person who by reason of youth, mental disease or defect, intoxication,
28 a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable
29 to make a reasonable judgment as to the nature or harmfulness of the conduct charged to
30 constitute the offense; or

31 (c) It is induced by force, duress or deception;

32 (6) "Criminal negligence" has the meaning specified in section 562.016;

33 (7) "Custody", a person is in custody when the person has been arrested but has not been
34 delivered to a place of confinement;

35 (8) "Dangerous felony" means the felonies of **murder in the first degree**, arson in the
36 first degree, assault in the first degree, attempted rape in the first degree if physical injury results,
37 attempted forcible rape if physical injury results, attempted sodomy in the first degree if physical
38 injury results, attempted forcible sodomy if physical injury results, rape in the first degree,
39 forcible rape, sodomy in the first degree, forcible sodomy, kidnapping, murder in the second
40 degree, assault of a law enforcement officer in the first degree, domestic assault in the first
41 degree, elder abuse in the first degree, robbery in the first degree, statutory rape in the first degree
42 when the victim is a child less than twelve years of age at the time of the commission of the act
43 giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than
44 twelve years of age at the time of the commission of the act giving rise to the offense, and, abuse
45 of a child if the child dies as a result of injuries sustained from conduct chargeable under section
46 568.060, child kidnapping, and parental kidnapping committed by detaining or concealing the
47 whereabouts of the child for not less than one hundred twenty days under section 565.153;

48 (9) "Dangerous instrument" means any instrument, article or substance, which, under the
49 circumstances in which it is used, is readily capable of causing death or other serious physical
50 injury;

- 51 (10) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from
52 which a shot, readily capable of producing death or serious physical injury, may be discharged,
53 or a switchblade knife, dagger, billy **club**, blackjack or metal knuckles;
- 54 (11) "Felony" has the meaning specified in section 556.016;
- 55 (12) "Forcible compulsion" means either:
- 56 (a) Physical force that overcomes reasonable resistance; or
- 57 (b) A threat, express or implied, that places a person in reasonable fear of death, serious
58 physical injury or kidnapping of such person or another person;
- 59 (13) "Incapacitated" means that physical or mental condition, temporary or permanent,
60 in which a person is unconscious, unable to appraise the nature of such person's conduct, or
61 unable to communicate unwillingness to an act;
- 62 (14) "Infraction" has the meaning specified in section 556.021;
- 63 (15) "Inhabitable structure" has the meaning specified in section 569.010;
- 64 (16) "Knowingly" has the meaning specified in section 562.016;
- 65 (17) "Law enforcement officer" means any public servant having both the power and
66 duty to make arrests for violations of the laws of this state, and federal law enforcement officers
67 authorized to carry firearms and to make arrests for violations of the laws of the United States;
- 68 (18) "Misdemeanor" has the meaning specified in section 556.016;
- 69 (19) "Offense" means any felony, misdemeanor or infraction;
- 70 (20) "Physical injury" means physical pain, illness, or any impairment of physical
71 condition;
- 72 (21) "Place of confinement" means any building or facility and the grounds thereof
73 wherein a court is legally authorized to order that a person charged with or convicted of a crime
74 be held;
- 75 (22) "Possess" or "possessed" means having actual or constructive possession of an
76 object with knowledge of its presence. A person has actual possession if such person has the
77 object on his or her person or within easy reach and convenient control. A person has
78 constructive possession if such person has the power and the intention at a given time to exercise
79 dominion or control over the object either directly or through another person or persons.
80 Possession may also be sole or joint. If one person alone has possession of an object, possession
81 is sole. If two or more persons share possession of an object, possession is joint;
- 82 (23) "Public servant" means any person employed in any way by a government of this
83 state who is compensated by the government by reason of such person's employment, any person
84 appointed to a position with any government of this state, or any person elected to a position with
85 any government of this state. It includes, but is not limited to, legislators, jurors, members of the
86 judiciary and law enforcement officers. It does not include witnesses;

87 (24) "Purposely" has the meaning specified in section 562.016;

88 (25) "Recklessly" has the meaning specified in section 562.016;

89 (26) "Ritual" or "ceremony" means an act or series of acts performed by two or more
90 persons as part of an established or prescribed pattern of activity;

91 (27) "Serious emotional injury", an injury that creates a substantial risk of temporary or
92 permanent medical or psychological damage, manifested by impairment of a behavioral,
93 cognitive or physical condition. Serious emotional injury shall be established by testimony of
94 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of
95 medical or psychological certainty;

96 (28) "Serious physical injury" means physical injury that creates a substantial risk of
97 death or that causes serious disfigurement or protracted loss or impairment of the function of any
98 part of the body;

99 (29) "Sexual conduct" means acts of human masturbation; deviate sexual intercourse;
100 sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area,
101 buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification;

102 (30) "Sexual contact" means any touching of the genitals or anus of any person, or the
103 breast of any female person, or any such touching through the clothing, for the purpose of
104 arousing or gratifying sexual desire of any person;

105 (31) "Sexual performance", any performance, or part thereof, which includes sexual
106 conduct by a child who is less than seventeen years of age;

107 (32) "Voluntary act" has the meaning specified in section 562.011.

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

3 2. **The offense of** murder in the first degree is a class A felony, and, **if a person is**
4 **eighteen years of age or older at the time of the offense**, the punishment shall be either death
5 or imprisonment for life without eligibility for probation or parole, or release except by act of
6 the governor; except that, if a person has not reached his [sixteenth] **or her eighteenth** birthday
7 at the time of the commission of the [crime] **offense**, the punishment shall be **either**
8 imprisonment for life without eligibility for probation or parole, or release except by act of the
9 governor **or imprisonment for life with eligibility for parole.**

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

5 2.] Where murder in the first degree is submitted to the trier without a waiver of the
6 death penalty, the trial shall proceed in two stages before the same trier. At the first stage the

7 trier shall decide only whether the defendant is guilty or not guilty of any submitted offense. The
8 issue of punishment shall not be submitted to the trier at the first stage. If an offense is charged
9 other than murder in the first degree in a count together with a count of murder in the first
10 degree, the trial judge shall assess punishment on any such offense according to law, after the
11 defendant is found guilty of such offense and after he finds the defendant to be a prior offender
12 pursuant to chapter 558.

13 [3.] 2. If murder in the first degree is submitted and the death penalty was not waived but
14 the trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed
15 at which the only issue shall be the punishment to be assessed and declared. No further evidence
16 shall be received. If the trier is a jury it shall be instructed on the law. The attorneys may then
17 argue as in other criminal cases the issue of punishment, after which the trier shall assess and
18 declare the punishment as in all other criminal cases.

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

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

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

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

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

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

50 [5.] 4. Upon written agreement of the parties and with leave of the court, the issue of the
51 defendant's mental retardation may be taken up by the court and decided prior to trial without
52 prejudicing the defendant's right to have the issue submitted to the trier of fact as provided in
53 subsection 4 of this section.

54 [6.] 5. As used in this section, the terms "mental retardation" or "mentally retarded" refer
55 to a condition involving substantial limitations in general functioning characterized by
56 significantly subaverage intellectual functioning with continual extensive related deficits and
57 limitations in two or more adaptive behaviors such as communication, self-care, home living,
58 social skills, community use, self-direction, health and safety, functional academics, leisure and
59 work, which conditions are manifested and documented before eighteen years of age.

60 [7.] 6. The provisions of this section shall only govern offenses committed on or after
61 August 28, 2001.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63 (17) The murder was committed during the commission of [a crime] **an offense** which
64 is part of a pattern of criminal street gang activity as defined in section 578.421.

65 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

76 (7) The age of the defendant at the time of the [crime] **offense**.

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 sentenced by the
3 court to life imprisonment without eligibility for probation, parole, or release except by act of
4 the governor, with the exception that when a specific aggravating circumstance found in a case
5 is held to be unconstitutional or invalid for another reason, the supreme court of Missouri is
6 further authorized to remand the case for resentencing or retrial of the punishment pursuant to
7 subsection 5 of section [565.036] **565.035**.

8 2. In the event that any death sentence imposed pursuant to this chapter is held to be
9 unconstitutional, the trial court which previously sentenced the defendant to death shall cause
10 the defendant to be brought before the court and shall sentence the defendant to life
11 imprisonment without eligibility for probation, parole, or release except by act of the governor,

12 with the exception that when a specific aggravating circumstance found in a case is held to be
13 inapplicable, unconstitutional or invalid for another reason, the supreme court of Missouri is
14 further authorized to remand the case for retrial of the punishment pursuant to subsection 5 of
15 section 565.035.

Section B. Because of the need to adopt a punishment scheme for first degree murderers
2 of a certain age after the United States Supreme Court declared as unconstitutional the only
3 punishment available under Missouri law for such offenders, the repeal and reenactment of
4 sections 556.061 and 565.020 and the enactment of section 565.033 of this act is deemed
5 necessary for the immediate preservation of the public health, welfare, peace and safety, and is
6 hereby declared to be an emergency act within the meaning of the constitution, and the repeal
7 and reenactment of sections 556.061 and 565.020 and the enactment of section 565.033 of this
8 act shall be in full force and effect upon its passage and approval.

Section C. The repeal and reenactment of section 565.032 of this act shall become
2 effective January 1, 2016.

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