

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 765,
2 Page 2, Section 304.125, Line 4, by inserting after all of said section and line the following:

3
4 "565.004. 1. Each homicide offense which is lawfully joined in the same indictment or
5 information together with any homicide offense or offense other than a homicide shall be charged
6 together with such offense in separate counts. A count charging any offense of homicide may only
7 be charged and tried together with one or more counts of any other homicide or offense other than a
8 homicide as provided in subsection 2 of section 545.140. Except as provided in subsections 2[, and
9 3[, and 4] of this section, no murder in the first degree offense may be tried together with any
10 offense other than murder in the first degree. In the event of a joinder of homicide offenses, all
11 offenses charged which are supported by the evidence in the case, together with all proper lesser
12 offenses under section 565.029, shall, when requested by one of the parties or the court, be
13 submitted to the jury or, in a jury-waived trial, considered by the judge.

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

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

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

Standing Action Taken _____ Date _____

Select Action Taken _____ Date _____

1 565.004. 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 charged
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4 be charged and tried together with one or more counts of any other homicide or offense other than a
5 homicide as provided in subsection 2 of section 545.140. Except as provided in subsections 2[, and
6 3[, and 4] of this section, no murder in the first degree offense may be tried together with any
7 offense other than murder in the first degree. In the event of a joinder of homicide offenses, all
8 offenses charged which are supported by the evidence in the case, together with all proper lesser
9 offenses under section 565.025, shall, when requested by one of the parties or the court, be
10 submitted to the jury or, in a jury-waived trial, considered by the judge.

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12 indictment or information and tried with one or more counts charging alternatively any other
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14 required to make an election as to the alternative count on which it will proceed. This subsection in
15 no way limits the right to try in the conjunctive, where they are properly joined under subsection 1
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17 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 other
20 than murder in the first degree, that offense may be tried and submitted to the trier together with any
21 murder in the first degree charge with which it is lawfully joined. In such case the judge will assess
22 punishment on any offense joined with a murder in the first degree charge according to law and,
23 when the trier is a jury, it shall be instructed upon punishment on the charge of murder in the first
24 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.]

28 565.006. 1. At any time before the commencement of the trial of a homicide offense, the
29 defendant may, with the assent of the court, waive a trial by jury and agree to submit all issues in the
30 case to the court, whose finding shall have the force and effect of a verdict of a jury. Such a waiver
31 must include a waiver of a trial by jury of all issues and offenses charged in the case, including the
32 punishment to be assessed and imposed if the defendant is found guilty.

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

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

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

41 565.020. 1. A person commits the crime of murder in the first degree if [he] such person

1 knowingly causes the death of another person after deliberation upon the matter.

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

7 565.040. [1. In the event that the death penalty provided in this chapter is held to be
8 unconstitutional,] Any person convicted of murder in the first degree [shall be] and sentenced by the
9 court to death prior to August 28, 2016, shall be sentenced by the court to life imprisonment without
10 eligibility for probation, parole, or release except by act of the governor[, with the exception that
11 when a specific aggravating circumstance found in a case is held to be unconstitutional or invalid
12 for another reason, the supreme court of Missouri is further authorized to remand the case for
13 resentencing or retrial of the punishment pursuant to subsection 5 of section 565.036.

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

21
22 Further amend said bill, Page 9, Section 610.100, Line 140, by inserting after all of said section and
23 line the following:

24
25 "[546.680. When judgment of death is rendered by any court of competent
26 jurisdiction, a warrant signed by the judge and attested by the clerk under the seal of
27 the court must be drawn and delivered to the sheriff. It must state the conviction and
28 judgment and appoint a day on which the judgment must be executed, which must
29 not be less than thirty nor more than sixty days from the date of judgment, and must
30 direct the sheriff to deliver the defendant, at a time specified in said order, not more
31 than ten days from the date of judgment, to the chief administrative officer of a
32 correctional facility of the department of corrections, for execution.]

33
34 [546.690. The judge of a court at which a conviction is had must, immediately after
35 the conviction, transmit to the governor of the state, by mail or otherwise, a
36 statement of the conviction and judgment.]

37
38 [546.700. Whenever, for any reason, any convict sentenced to the punishment of
39 death shall not have been executed pursuant to such sentence, and the cause shall
40 stand in full force, the supreme court, or the court of the county in which the
41 conviction was had, on the application of the prosecuting attorney, shall issue a writ

1 of habeas corpus to bring such convict before the court; or if he be at large, a warrant
2 for his apprehension may be issued by such court, or any judge thereof.]

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

9
10 [546.720. 1. The manner of inflicting the punishment of death shall be by the
11 administration of lethal gas or by means of the administration of lethal injection.
12 And for such purpose the director of the department of corrections is hereby
13 authorized and directed to provide a suitable and efficient room or place, enclosed
14 from public view, within the walls of a correctional facility of the department of
15 corrections, and the necessary appliances for carrying into execution the death
16 penalty by means of the administration of lethal gas or by means of the
17 administration of lethal injection.

18 2. The director of the department of corrections shall select an execution
19 team which shall consist of those persons who administer lethal gas or lethal
20 chemicals and those persons, such as medical personnel, who provide direct support
21 for the administration of lethal gas or lethal chemicals. The identities of members of
22 the execution team, as defined in the execution protocol of the department of
23 corrections, shall be kept confidential. Notwithstanding any provision of law to the
24 contrary, any portion of a record that could identify a person as being a current or
25 former member of an execution team shall be privileged and shall not be subject to
26 discovery, subpoena, or other means of legal compulsion for disclosure to any person
27 or entity, the remainder of such record shall not be privileged or closed unless
28 protected from disclosure by law. The section of an execution protocol that directly
29 relates to the administration of lethal gas or lethal chemicals is an open record, the
30 remainder of any execution protocol of the department of corrections is a closed
31 record.

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

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

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

39 (a) Actual damages; and

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

41 4. Notwithstanding any provision of law to the contrary, if a member of the

1 execution team is licensed by a board or department, the licensing board or
2 department shall not censure, reprimand, suspend, revoke, or take any other
3 disciplinary action against the person's license because of his or her participation in a
4 lawful execution. All members of the execution team are entitled to coverage under
5 the state legal expense fund established by section 105.711 for conduct of such
6 execution team member arising out of and performed in connection with his or her
7 official duties on behalf of the state or any agency of the state, provided that moneys
8 in this fund shall not be available for payment of claims under chapter 287.]
9

10 [546.730. A judgment of death must be executed within a correctional center of the
11 department of corrections; and such execution shall be under the supervision and
12 direction of the director of the department of corrections.]
13

14 [546.740. The chief administrative officer of the correctional center, or his duly
15 appointed representative shall be present at the execution and the director of the
16 department of corrections shall invite the presence of the attorney general of the
17 state, and at least eight reputable citizens, to be selected by him; and he shall at the
18 request of the defendant, permit such clergy or religious leaders, not exceeding two,
19 as the defendant may name, and any person, other than another incarcerated offender,
20 relatives or friends, not to exceed five, to be present at the execution, together with
21 such peace officers as he may think expedient, to witness the execution; but no
22 person under twenty-one years of age shall be allowed to witness the execution.]
23

24 [546.750. After the execution the chief administrative officer of the correctional
25 facility shall make a return upon the death warrant to the court by which the
26 judgment was rendered, showing the time, mode and manner in which it was
27 executed.]

28 [546.800. If, after any female convict shall be sentenced to the punishment of
29 death, the officer having charge of her person shall have reason to suspect that she is
30 pregnant, he shall in like manner summon a jury of six persons, not less than three of
31 whom shall be physicians, and shall give notice thereof to the prosecuting attorney of
32 the county where such criminal proceedings originated, or to the circuit attorney of
33 the city of St. Louis, if such criminal proceedings originated in that city, who shall
34 attend, and the proceedings shall be had as provided.]
35

36 [546.810. The inquisition shall be signed by the jury and the officer in charge of
37 such convict, and if it appear that such female convict is pregnant with child, her
38 execution shall be suspended and the inquisition shall be transmitted to the governor.]
39

40 [546.820. Whenever the governor shall be satisfied that the cause of such suspension
41 no longer exists, he shall issue his warrant, appointing a day for the execution of such

1 convict, pursuant to her sentence; or he may, at his discretion, commute her
2 punishment to imprisonment in the penitentiary for life.]

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

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

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

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

38 (1) If the trier finds by a preponderance of the evidence that the defendant is
39 intellectually disabled; or

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

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

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

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

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

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

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

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

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

36 (2) If a statutory aggravating circumstance or circumstances is proven beyond a
37 reasonable doubt, whether the evidence as a whole justifies a sentence of death or a
38 sentence of life imprisonment without eligibility for probation, parole, or release
39 except by act of the governor. In determining the issues enumerated in subdivisions
40 (1) and (2) of this subsection, the trier shall consider all evidence which it finds to be
41 in aggravation or mitigation of punishment, including evidence received during the

1 first stage of the trial and evidence supporting any of the statutory aggravating or
2 mitigating circumstances set out in subsections 2 and 3 of this section. If the trier is
3 a jury, it shall not be instructed upon any specific evidence which may be in
4 aggravation or mitigation of punishment, but shall be instructed that each juror shall
5 consider any evidence which he considers to be aggravating or mitigating.

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

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

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

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

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

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

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

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

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

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

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

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

41 (12) The murdered individual was a witness or potential witness in any past or

1 pending investigation or past or pending prosecution, and was killed as a result of his
2 status as a witness or potential witness;

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

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

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

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

14 (17) The murder was committed during the commission of a
15 crime which is part of a pattern of
16 criminal street gang activity as defined
17 in section 578.421. 3. Statutory
18 mitigating circumstances shall include
19 the following:

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

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

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

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

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

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

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

31
32 [565.035. 1. Whenever the death penalty is imposed in any case, and upon the
33 judgment becoming final in the trial court, the sentence shall be reviewed on the
34 record by the supreme court of Missouri. The circuit clerk of the court trying the
35 case, within ten days after receiving the transcript, shall transmit the entire record
36 and transcript to the supreme court together with a notice prepared by the circuit
37 clerk and a report prepared by the trial judge. The notice shall set forth the title and
38 docket number of the case, the name of the defendant and the name and address of
39 his attorney, a narrative statement of the judgment, the offense, and the punishment
40 prescribed. The report by the judge shall be in the form of a standard questionnaire
41 prepared and supplied by the supreme court of Missouri.

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

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

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

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

9 (3) Whether the sentence of death is excessive or disproportionate to the penalty
10 imposed in similar cases, considering both the offense, the strength of the evidence
11 and the defendant.

12 4. Both the defendant and the state shall have the right to submit briefs within the
13 time provided by the supreme court, and to present oral argument to the supreme
14 court.

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

19 (1) Affirm the sentence of death; or

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

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

28 6. There shall be an assistant to the supreme court, who shall be an attorney
29 appointed by the supreme court and who shall serve at the pleasure of the court. The
30 court shall accumulate the records of all cases in which the sentence of death or life
31 imprisonment without probation or parole was imposed after May 26, 1977, or such
32 earlier date as the court may deem appropriate. The assistant shall provide the court
33 with whatever extracted information the court desires with respect thereto, including
34 but not limited to a synopsis or brief of the facts in the record concerning the offense
35 and the defendant. The court shall be authorized to employ an appropriate staff,
36 within the limits of appropriations made for that purpose, and such methods to
37 compile such data as are deemed by the supreme court to be appropriate and relevant
38 to the statutory questions concerning the validity of the sentence. The office of the
39 assistant to the supreme court shall be attached to the office of the clerk of the
40 supreme court for administrative purposes.

41 7. In addition to the mandatory sentence review, there shall be a right of direct

1 appeal of the conviction to the supreme court of Missouri. This right of appeal may
2 be waived by the defendant. If an appeal is taken, the appeal and the sentence review
3 shall be consolidated for consideration. The court shall render its decision on legal
4 errors enumerated, the factual substantiation of the verdict, and the validity of the
5 sentence.]
6

7 [565.035. 1. Whenever the death penalty is imposed in any case, and upon the
8 judgment becoming final in the trial court, the sentence shall be reviewed on the
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11 and transcript to the supreme court together with a notice prepared by the circuit
12 clerk and a report prepared by the trial judge. The notice shall set forth the title and
13 docket number of the case, the name of the defendant and the name and address of
14 his attorney, a narrative statement of the judgment, the offense, and the punishment
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21 prejudice, or any other arbitrary factor; and

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

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

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29 within the time provided by the supreme court, and to present oral argument to the
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38 (3) Set the sentence aside and remand the case for retrial of the punishment hearing.

39 A new jury shall be selected or a jury may be waived by agreement of both parties
40 and then the punishment trial shall proceed in accordance with this chapter, with the
41 exception that the evidence of the guilty verdict shall be admissible in the new trial

1 together with the official transcript of any testimony and evidence properly admitted
2 in each stage of the original trial where relevant to determine punishment.

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19 shall be consolidated for consideration. The court shall render its decision on legal
20 errors enumerated, the factual substantiation of the verdict, and the validity of the
21 sentence.]" ; and

22
23 Further amend said bill by amending the title, enacting clause, and intersectional references
24 accordingly.