

SECOND REGULAR SESSION

HOUSE BILL NO. 2084

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORLEW.

5413H.03I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 565.020, 565.030, 565.032, and 565.040, RSMo, section 556.061 as enacted by house bill no. 1371, ninety-seventh general assembly, second regular session, and section 556.061 as enacted by house bill no. 215 merged with house bill no. 505, ninety-seventh general assembly, first regular session, and to enact in lieu thereof seven new sections relating to first degree murder, with penalty provisions, an emergency clause for certain sections and an effective date for certain sections.

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

Section A. Section 565.020, 565.030, 565.032, and 565.040, RSMo, section 556.061 as
2 enacted by house bill no. 1371, ninety-seventh general assembly, second regular session, and
3 section 556.061 as enacted by house bill no. 215 merged with house bill no. 505, ninety-seventh
4 general assembly, first regular session are repealed and seven new sections enacted in lieu
5 thereof, to be known as sections 556.061, 556.061, 565.020, 565.030, 565.032, 565.033, and
6 565.040, to read as follows:

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

3 (1) "Access", to instruct, communicate with, store data in, retrieve or extract data from,
4 or otherwise make any use of any resources of, a computer, computer system, or computer
5 network;

6 (2) "Affirmative defense":

7 (a) The defense referred to is not submitted to the trier of fact unless supported by
8 evidence; and

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 (b) If the defense is submitted to the trier of fact the defendant has the burden of
10 persuasion that the defense is more probably true than not;

11 (3) "Burden of injecting the issue":

12 (a) The issue referred to is not submitted to the trier of fact unless supported by evidence;
13 and

14 (b) If the issue is submitted to the trier of fact any reasonable doubt on the issue requires
15 a finding for the defendant on that issue;

16 (4) "Commercial film and photographic print processor", any person who develops
17 exposed photographic film into negatives, slides or prints, or who makes prints from negatives
18 or slides, for compensation. The term commercial film and photographic print processor shall
19 include all employees of such persons but shall not include a person who develops film or makes
20 prints for a public agency;

21 (5) "Computer", the box that houses the central processing unit (CPU), along with any
22 internal storage devices, such as internal hard drives, and internal communication devices, such
23 as internal modems capable of sending or receiving electronic mail or fax cards, along with any
24 other hardware stored or housed internally. Thus, computer refers to hardware, software and data
25 contained in the main unit. Printers, external modems attached by cable to the main unit,
26 monitors, and other external attachments will be referred to collectively as peripherals and
27 discussed individually when appropriate. When the computer and all peripherals are referred to
28 as a package, the term "computer system" is used. Information refers to all the information on
29 a computer system including both software applications and data;

30 (6) "Computer equipment", computers, terminals, data storage devices, and all other
31 computer hardware associated with a computer system or network;

32 (7) "Computer hardware", all equipment which can collect, analyze, create, display,
33 convert, store, conceal or transmit electronic, magnetic, optical or similar computer impulses or
34 data. Hardware includes, but is not limited to, any data processing devices, such as central
35 processing units, memory typewriters and self-contained laptop or notebook computers; internal
36 and peripheral storage devices, transistor-like binary devices and other memory storage devices,
37 such as floppy disks, removable disks, compact disks, digital video disks, magnetic tape, hard
38 drive, optical disks and digital memory; local area networks, such as two or more computers
39 connected together to a central computer server via cable or modem; peripheral input or output
40 devices, such as keyboards, printers, scanners, plotters, video display monitors and optical
41 readers; and related communication devices, such as modems, cables and connections, recording
42 equipment, RAM or ROM units, acoustic couplers, automatic dialers, speed dialers,
43 programmable telephone dialing or signaling devices and electronic tone-generating devices; as

44 well as any devices, mechanisms or parts that can be used to restrict access to computer
45 hardware, such as physical keys and locks;

46 (8) "Computer network", two or more interconnected computers or computer systems;

47 (9) "Computer program", a set of instructions, statements, or related data that directs or
48 is intended to direct a computer to perform certain functions;

49 (10) "Computer software", digital information which can be interpreted by a computer
50 and any of its related components to direct the way they work. Software is stored in electronic,
51 magnetic, optical or other digital form. The term commonly includes programs to run operating
52 systems and applications, such as word processing, graphic, or spreadsheet programs, utilities,
53 compilers, interpreters and communications programs;

54 (11) "Computer-related documentation", written, recorded, printed or electronically
55 stored material which explains or illustrates how to configure or use computer hardware,
56 software or other related items;

57 (12) "Computer system", a set of related, connected or unconnected, computer
58 equipment, data, or software;

59 (13) "Confinement":

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

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

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

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

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

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

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

72 (14) "Consent": consent or lack of consent may be expressed or implied. Assent does
73 not constitute consent if:

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

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

- 80 (c) It is induced by force, duress or deception;
- 81 (15) "Controlled substance", a drug, substance, or immediate precursor in schedules I
82 through V as defined in chapter 195;
- 83 (16) "Criminal negligence", failure to be aware of a substantial and unjustifiable risk that
84 circumstances exist or a result will follow, and such failure constitutes a gross deviation from
85 the standard of care which a reasonable person would exercise in the situation;
- 86 (17) "Custody", a person is in custody when he or she has been arrested but has not been
87 delivered to a place of confinement;
- 88 (18) "Damage", when used in relation to a computer system or network, means any
89 alteration, deletion, or destruction of any part of the computer system or network;
- 90 (19) "Dangerous felony", the felonies of **murder in the first degree**, arson in the first
91 degree, assault in the first degree, attempted rape in the first degree if physical injury results,
92 attempted forcible rape if physical injury results, attempted sodomy in the first degree if physical
93 injury results, attempted forcible sodomy if physical injury results, rape in the first degree,
94 forcible rape, sodomy in the first degree, forcible sodomy, assault in the second degree if the
95 victim of such assault is a special victim as defined in subdivision (14) of section 565.002,
96 kidnapping in the first degree, kidnapping, murder in the second degree, assault of a law
97 enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first
98 degree, robbery in the first degree, statutory rape in the first degree when the victim is a child less
99 than twelve years of age at the time of the commission of the act giving rise to the offense,
100 statutory sodomy in the first degree when the victim is a child less than twelve years of age at
101 the time of the commission of the act giving rise to the offense, child molestation in the first or
102 second degree, abuse of a child if the child dies as a result of injuries sustained from conduct
103 chargeable under section 568.060, child kidnapping, parental kidnapping committed by detaining
104 or concealing the whereabouts of the child for not less than one hundred twenty days under
105 section 565.153, and an "intoxication-related traffic offense" or "intoxication-related boating
106 offense" if the person is found to be a "habitual offender" or "habitual boating offender" as such
107 terms are defined in section 577.001;
- 108 (20) "Dangerous instrument", any instrument, article or substance, which, under the
109 circumstances in which it is used, is readily capable of causing death or other serious physical
110 injury;
- 111 (21) "Data", a representation of information, facts, knowledge, concepts, or instructions
112 prepared in a formalized or other manner and intended for use in a computer or computer
113 network. Data may be in any form including, but not limited to, printouts, microfiche, magnetic
114 storage media, punched cards and as may be stored in the memory of a computer;

115 (22) "Deadly weapon", any firearm, loaded or unloaded, or any weapon from which a
116 shot, readily capable of producing death or serious physical injury, may be discharged, or a
117 switchblade knife, dagger, billy club, blackjack or metal knuckles;

118 (23) "Digital camera", a camera that records images in a format which enables the
119 images to be downloaded into a computer;

120 (24) "Disability", a mental, physical, or developmental impairment that substantially
121 limits one or more major life activities or the ability to provide adequately for one's care or
122 protection, whether the impairment is congenital or acquired by accident, injury or disease, where
123 such impairment is verified by medical findings;

124 (25) "Elderly person", a person sixty years of age or older;

125 (26) "Felony", an offense so designated or an offense for which persons found guilty
126 thereof may be sentenced to death or imprisonment for a term of more than one year;

127 (27) "Forcible compulsion" either:

128 (a) Physical force that overcomes reasonable resistance; or

129 (b) A threat, express or implied, that places a person in reasonable fear of death, serious
130 physical injury or kidnapping of such person or another person;

131 (28) "Incapacitated", a temporary or permanent physical or mental condition in which
132 a person is unconscious, unable to appraise the nature of his or her conduct, or unable to
133 communicate unwillingness to an act;

134 (29) "Infraction", a violation defined by this code or by any other statute of this state if
135 it is so designated or if no sentence other than a fine, or fine and forfeiture or other civil penalty,
136 is authorized upon conviction;

137 (30) "Inhabitable structure", a vehicle, vessel or structure:

138 (a) Where any person lives or carries on business or other calling; or

139 (b) Where people assemble for purposes of business, government, education, religion,
140 entertainment, or public transportation; or

141 (c) Which is used for overnight accommodation of persons.

142 Any such vehicle, vessel, or structure is inhabitable regardless of whether a person is actually
143 present.

144 If a building or structure is divided into separately occupied units, any unit not occupied by the
145 actor is an inhabitable structure of another;

146 (31) "Knowingly", when used with respect to:

147 (a) Conduct or attendant circumstances, means a person is aware of the nature of his or
148 her conduct or that those circumstances exist; or

149 (b) A result of conduct, means a person is aware that his or her conduct is practically
150 certain to cause that result;

151 (32) "Law enforcement officer", any public servant having both the power and duty to
152 make arrests for violations of the laws of this state, and federal law enforcement officers
153 authorized to carry firearms and to make arrests for violations of the laws of the United States;
154 (33) "Misdemeanor", an offense so designated or an offense for which persons found
155 guilty thereof may be sentenced to imprisonment for a term of which the maximum is one year
156 or less;
157 (34) "Of another", property that any entity, including but not limited to any natural
158 person, corporation, limited liability company, partnership, association, governmental
159 subdivision or instrumentality, other than the actor, has a possessory or proprietary interest
160 therein, except that property shall not be deemed property of another who has only a security
161 interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or
162 other security arrangement;
163 (35) "Offense", any felony or misdemeanor;
164 (36) "Physical injury", slight impairment of any function of the body or temporary loss
165 of use of any part of the body;
166 (37) "Place of confinement", any building or facility and the grounds thereof wherein a
167 court is legally authorized to order that a person charged with or convicted of a crime be held;
168 (38) "Possess" or "possessed", having actual or constructive possession of an object with
169 knowledge of its presence. A person has actual possession if such person has the object on his
170 or her person or within easy reach and convenient control. A person has constructive possession
171 if such person has the power and the intention at a given time to exercise dominion or control
172 over the object either directly or through another person or persons. Possession may also be sole
173 or joint. If one person alone has possession of an object, possession is sole. If two or more
174 persons share possession of an object, possession is joint;
175 (39) "Property", anything of value, whether real or personal, tangible or intangible, in
176 possession or in action;
177 (40) "Public servant", any person employed in any way by a government of this state who
178 is compensated by the government by reason of such person's employment, any person appointed
179 to a position with any government of this state, or any person elected to a position with any
180 government of this state. It includes, but is not limited to, legislators, jurors, members of the
181 judiciary and law enforcement officers. It does not include witnesses;
182 (41) "Purposely", when used with respect to a person's conduct or to a result thereof,
183 means when it is his or her conscious object to engage in that conduct or to cause that result;
184 (42) "Recklessly", consciously disregarding a substantial and unjustifiable risk that
185 circumstances exist or that a result will follow, and such disregard constitutes a gross deviation
186 from the standard of care which a reasonable person would exercise in the situation;

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

(44) "Serious physical injury", physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body;

(45) "Services", when used in relation to a computer system or network, means use of a computer, computer system, or computer network and includes, but is not limited to, computer time, data processing, and storage or retrieval functions;

(46) "Sexual orientation", male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, or having a self-image or identity not traditionally associated with one's gender;

(47) "Vehicle", a self-propelled mechanical device designed to carry a person or persons, excluding vessels or aircraft;

(48) "Vessel", any boat or craft propelled by a motor or by machinery, whether or not such motor or machinery is a principal source of propulsion used or capable of being used as a means of transportation on water, or any boat or craft more than twelve feet in length which is powered by sail alone or by a combination of sail and machinery, and used or capable of being used as a means of transportation on water, but not any boat or craft having, as the only means of propulsion, a paddle or oars;

(49) "Voluntary act":

(a) A bodily movement performed while conscious as a result of effort or determination. Possession is a voluntary act if the possessor knowingly procures or receives the thing possessed, or having acquired control of it was aware of his or her control for a sufficient time to have enabled him or her to dispose of it or terminate his or her control; or

(b) An omission to perform an act of which the actor is physically capable. A person is not guilty of an offense based solely upon an omission to perform an act unless the law defining the offense expressly so provides, or a duty to perform the omitted act is otherwise imposed by law;

(50) "Vulnerable person", any person in the custody, care, or control of the department of mental health who is receiving services from an operated, funded, licensed, or certified program.

556.061. In this code, unless the context requires a different definition, the following 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;
- 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**
7 birthday at the time of the commission of the [crime] **offense**, the punishment shall be
8 [imprisonment for life without eligibility for probation or parole, or release except by act of the
9 governor] **as provided under section 565.033.**

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

13 3. If murder in the first degree is submitted and the death penalty was not waived but the
14 trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed [at
15 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] **as in all other criminal**
17 **cases.** The attorneys may then argue as in other criminal cases the issue of punishment, after
18 which the trier shall assess and declare the punishment as in all other criminal cases.

19 4. If the trier at the first stage of a trial where the death penalty was not waived finds the
20 defendant guilty of murder in the first degree, a second stage of the trial shall proceed at which
21 the only issue shall be the punishment to be assessed and declared. Evidence in aggravation and
22 mitigation of punishment, including but not limited to evidence supporting any of the
23 aggravating or mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be
24 presented subject to the rules of evidence at criminal trials. Such evidence may include, within
25 the discretion of the court, evidence concerning the murder victim and the impact of the [crime]
26 **offense** upon the family of the victim and others. Rebuttal and surrebuttal evidence may be
27 presented. The state shall be the first to proceed. If the trier is a jury it shall be instructed on the
28 law. The attorneys may then argue the issue of punishment to the jury, and the state shall have

29 the right to open and close the argument. The trier shall assess and declare the punishment at life
30 imprisonment without eligibility for probation, parole, or release except by act of the governor:

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

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

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

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

41

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. Upon written agreement of the parties and with leave of the court, the issue of the
51 defendant's intellectual disability 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. As used in this section, the terms "intellectual disability" or "intellectually disabled"
55 refer 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. The provisions of this section shall only govern offenses committed on or after August
61 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 **or 579**;

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 **or 579**;

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 **or 579**;

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.

2 **565.033. 1. A person found guilty of murder in the first degree who was under the**
3 **age of eighteen at the time of the commission of the offense shall be sentenced as follows:**

4 (1) A person who at the time of the commission of the offense was sixteen years of
5 age or older shall be sentenced to a term of imprisonment for life without eligibility for
6 probation, parole, or release, or a term of imprisonment, the minimum of which shall be
7 at least forty years; and

8 (2) A person who at the time of the commission of the offense was under sixteen
9 years of age shall be sentenced to a term of imprisonment for life without eligibility for
10 probation, parole, or release, or a term of imprisonment, the minimum of which shall be
11 at least thirty years.

12 2. If the prosecuting or circuit attorney intends to seek a punishment of
13 imprisonment for life without eligibility for probation, parole, or release, the prosecuting
14 or circuit attorney shall file a notice of such intent after conviction and before sentencing.

15 3. Any person sentenced under section 565.020 to imprisonment for life without
16 eligibility for probation, parole, or release before the effective date of this section for an
17 offense committed when the person was less than eighteen years of age whose case is not
18 final for purposes of appeal as of the effective date of this section may, within six months
19 of the effective date of this section, file a motion with the sentencing court for a hearing
20 before a judge to review the person's sentence for murder in the first degree. The sole
21 purpose of the sentencing hearing shall be to determine if the sentence of imprisonment for
22 life without eligibility for probation, parole, or conditional release shall remain or be
23 amended in accordance with this section.

24 4. The procedures provided under this section shall not apply to any case that is
25 final for purposes of appeal as of the effective date of this section.

26 5. A case is final for purposes of appeal:

27 (1) When the time for filing an appeal in the Missouri court of appeals has expired;

28 (2) If an appeal was filed in the Missouri court of appeals, when the time for filing
29 an application for transfer in the Missouri supreme court has expired;

30 (3) If an application was filed for transfer to the Missouri supreme court, when the
31 application for transfer was denied or when a timely filed motion for rehearing was
32 denied; or

33 (4) If the Missouri supreme court granted transfer, when the Missouri supreme
34 court rendered its decision or when a timely filed motion for rehearing was denied.

35 6. If the Supreme Court of Missouri or the United States Supreme Court finds that
the decision of the United States Supreme Court in *Miller v. Alabama*, 132 S.Ct. 2455

36 **(2012), applies retroactively to all defendants who were under the age of eighteen at the**
37 **time of their crimes, then any person sentenced to a term of imprisonment for life without**
38 **eligibility for parole before the effective date of this section who was under eighteen years**
39 **of age at the time of the commission of the offense or offenses may submit to the sentencing**
40 **court of original jurisdiction a petition for a review of his or her sentence by a judge,**
41 **regardless of whether the case is final for purposes of appeal.**

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 section 565.020, the repeal and reenactment of the second occurrence of section 556.061, and
5 the enactment of section 565.033 of this act is deemed necessary for the immediate preservation
6 of the public health, welfare, peace and safety, and is hereby declared to be an emergency act
7 within the meaning of the constitution, and the repeal and reenactment of section 565.020, the
8 repeal and reenactment of the second occurrence of section 556.061, and the enactment of
9 section 565.033 of this act shall be in full force and effect upon its passage and approval.

Section C. The repeal and reenactment of section 565.032 and the repeal and
2 reenactment of the first occurrence of section 556.061 of this act shall become effective January
3 1, 2017.

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