

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Bill No. 5, Page 33, Section
2 197.295, Line 17, 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.]~~

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

36 2. No defendant who pleads guilty to a homicide offense or who is found guilty of a

Action Taken _____ Date _____

1 homicide offense after trial to the court without a jury shall be permitted a trial by jury on the issue
2 of the punishment to be imposed, except by agreement of the state.

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

6 ~~———4.] Any waiver of a jury trial and agreement permitted by this section shall be entered in the~~
7 ~~court record.~~

8 565.020. 1. A person commits the offense of murder in the first degree if ~~[he or she]~~ such
9 person knowingly causes the death of another person after deliberation upon the matter.

10 2. The offense of murder in the first degree is a class A felony, and, if a person is eighteen
11 years of age or older at the time of the offense, the punishment shall be ~~[either death or]~~
12 imprisonment for life without eligibility for probation or parole, or release except by act of the
13 governor. If a person has not reached his or her eighteenth birthday at the time of the commission
14 of the offense, the punishment shall be as provided under section 565.033.

15 565.040. ~~[1. In the event that the death penalty provided in this chapter is held to be~~
16 ~~unconstitutional,]~~ Any person convicted of murder in the first degree ~~[shall be]~~ and sentenced by the
17 court to death prior to August 28, 2017, shall be sentenced by the court to life imprisonment without
18 eligibility for probation, parole, or release except by act of the governor~~[- with the exception that~~
19 ~~when a specific aggravating circumstance found in a case is held to be unconstitutional or invalid~~
20 ~~for another reason, the supreme court of Missouri is further authorized to remand the case for~~
21 ~~resentencing or retrial of the punishment pursuant to subsection 5 of section 565.035.~~

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

30 Further amend said bill and page, Section 595.027, Line 8, by inserting after all of said section and
31 line the following:

33 ~~[546.680. When judgment of death is rendered by any court of competent~~
34 ~~jurisdiction, a warrant signed by the judge and attested by the clerk under the seal of~~
35 ~~the court must be drawn and delivered to the sheriff. It must state the conviction and~~
36 ~~judgment and appoint a day on which the judgment must be executed, which must~~
37 ~~not be less than thirty nor more than sixty days from the date of judgment, and must~~
38 ~~direct the sheriff to deliver the defendant, at a time specified in said order, not more~~
39 ~~than ten days from the date of judgment, to the chief administrative officer of a~~
40 ~~correctional facility of the department of corrections, for execution.]~~

42 ~~[546.690. The judge of a court at which a conviction is had must, immediately after~~
43 ~~the conviction, transmit to the governor of the state, by mail or otherwise, a~~
44 ~~statement of the conviction and judgment.]~~

46 ~~[546.700. Whenever, for any reason, any convict sentenced to the punishment of~~
47 ~~death shall not have been executed pursuant to such sentence, and the cause shall~~
48 ~~stand in full force, the supreme court, or the court of the county in which the~~

1 conviction was had, on the application of the prosecuting attorney, shall issue a writ
2 of habeas corpus to bring such convict before the court; or if he be at large, a warrant
3 for his apprehension may be issued by such court, or any judge thereof.]
4

5 [546.710. Upon such convicted offender being brought before the court, they shall
6 proceed to inquire into the facts, and if no legal reasons exist against the execution of
7 sentence, such court shall issue a warrant to the director of the department of
8 corrections, for the execution of the prisoner at the time therein specified, which
9 execution shall be obeyed by the director accordingly.]
10

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

19 2. The director of the department of corrections shall select an execution team which
20 shall consist of those persons who administer lethal gas or lethal chemicals and those
21 persons, such as medical personnel, who provide direct support for the administration
22 of lethal gas or lethal chemicals. The identities of members of the execution team, as
23 defined in the execution protocol of the department of corrections, shall be kept
24 confidential. Notwithstanding any provision of law to the contrary, any portion of a
25 record that could identify a person as being a current or former member of an
26 execution team shall be privileged and shall not be subject to discovery, subpoena, or
27 other means of legal compulsion for disclosure to any person or entity, the remainder
28 of such record shall not be privileged or closed unless protected from disclosure by
29 law. The section of an execution protocol that directly relates to the administration
30 of lethal gas or lethal chemicals is an open record, the remainder of any execution
31 protocol of the department of corrections is a closed 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
42 execution team is licensed by a board or department, the licensing board or
43 department shall not censure, reprimand, suspend, revoke, or take any other
44 disciplinary action against the person's license because of his or her participation in a
45 lawful execution. All members of the execution team are entitled to coverage under
46 the state legal expense fund established by section 105.711 for conduct of such
47 execution team member arising out of and performed in connection with his or her
48 official duties on behalf of the state or any agency of the state, provided that moneys

1 in this fund shall not be available for payment of claims under chapter 287.]

2
3 [546.730. A judgment of death must be executed within a correctional center of the
4 department of corrections; and such execution shall be under the supervision and
5 direction of the director of the department of corrections.]

6
7 [546.740. The chief administrative officer of the correctional center, or his duly
8 appointed representative shall be present at the execution and the director of the
9 department of corrections shall invite the presence of the attorney general of the
10 state, and at least eight reputable citizens, to be selected by him; and he shall at the
11 request of the defendant, permit such clergy or religious leaders, not exceeding two,
12 as the defendant may name, and any person, other than another incarcerated offender,
13 relatives or friends, not to exceed five, to be present at the execution, together with
14 such peace officers as he may think expedient, to witness the execution; but no
15 person under twenty-one years of age shall be allowed to witness the execution.]

16
17 [546.750. After the execution the chief administrative officer of the correctional
18 facility shall make a return upon the death warrant to the court by which the
19 judgment was rendered, showing the time, mode and manner in which it was
20 executed.]

21
22 [546.800. If, after any female convict shall be sentenced to the punishment of death,
23 the officer having charge of her person shall have reason to suspect that she is
24 pregnant, he shall in like manner summon a jury of six persons, not less than three of
25 whom shall be physicians, and shall give notice thereof to the prosecuting attorney of
26 the county where such criminal proceedings originated, or to the circuit attorney of
27 the city of St. Louis, if such criminal proceedings originated in that city, who shall
28 attend, and the proceedings shall be had as provided.]

29
30 [546.810. The inquisition shall be signed by the jury and the officer in charge of
31 such convict, and if it appear that such female convict is pregnant with child, her
32 execution shall be suspended and the inquisition shall be transmitted to the governor.]

33
34 [546.820. Whenever the governor shall be satisfied that the cause of such suspension
35 no longer exists, he shall issue his warrant, appointing a day for the execution of such
36 convict, pursuant to her sentence; or he may, at his discretion, commute her
37 punishment to imprisonment in the penitentiary for life.]

38
39 [565.030. 1. Where murder in the first degree is charged but not submitted or where
40 the state waives the death penalty, the submission to the trier and all subsequent
41 proceedings in the case shall proceed as in all other criminal cases.

42 2. Where murder in the first degree is submitted to the trier without a waiver of the
43 death penalty, the trial shall proceed in two stages before the same trier. At the first
44 stage the trier shall decide only whether the defendant is guilty or not guilty of any
45 submitted offense. The issue of punishment shall not be submitted to the trier at the
46 first stage. If an offense is charged other than murder in the first degree in a count
47 together with a count of murder in the first degree, the trial judge shall assess
48 punishment on any such offense according to law, after the defendant is found guilty

of such offense and after he finds the defendant to be a prior offender pursuant to chapter 558.

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

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

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

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

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

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

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

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

6. As used in this section, the terms "intellectual disability" or "intellectually disabled" refer to a condition involving substantial limitations in general functioning characterized by significantly subaverage intellectual functioning with continual extensive related deficits and limitations in two or more adaptive behaviors such as

1 communication, self-care, home living, social skills, community use, self-direction,
 2 health and safety, functional academics, leisure and work, which conditions are
 3 manifested and documented before eighteen years of age.

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

6
 7 [565.032. 1. In all cases of murder in the first degree for which the death penalty is
 8 authorized, the judge in a jury-waived trial shall consider, or shall include in his or
 9 her instructions to the jury for it to consider:

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

13 (2) If a statutory aggravating circumstance or circumstances is proven beyond a
 14 reasonable doubt, whether the evidence as a whole justifies a sentence of death or a
 15 sentence of life imprisonment without eligibility for probation, parole, or release
 16 except by act of the governor.

17
 18 In determining the issues enumerated in subdivisions (1) and (2) of this subsection,
 19 the trier shall consider all evidence which it finds to be in aggravation or mitigation
 20 of punishment, including evidence received during the first stage of the trial and
 21 evidence supporting any of the statutory aggravating or mitigating circumstances set
 22 out in subsections 2 and 3 of this section. If the trier is a jury, it shall not be
 23 instructed upon any specific evidence which may be in aggravation or mitigation of
 24 punishment, but shall be instructed that each juror shall consider any evidence which
 25 he or she considers to be aggravating or mitigating.

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

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

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

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

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

39 (5) The murder in the first degree was committed against a judicial officer, former
 40 judicial officer, prosecuting attorney or former prosecuting attorney, circuit attorney
 41 or former circuit attorney, assistant prosecuting attorney or former assistant
 42 prosecuting attorney, assistant circuit attorney or former assistant circuit attorney,
 43 peace officer or former peace officer, elected official or former elected official during
 44 or because of the exercise of his official duty;

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

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

- (8) The murder in the first degree was committed against any peace officer, or fireman while engaged in the performance of his or her official duty;
- (9) The murder in the first degree was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement;
- (10) The murder in the first degree was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or herself or another;
- (11) The murder in the first degree was committed while the defendant was engaged in the perpetration or was aiding or encouraging another person to perpetrate or attempt to perpetrate a felony of any degree of rape, sodomy, burglary, robbery, kidnapping, or any felony offense in chapter 195 or 579;
- (12) The murdered individual was a witness or potential witness in any past or pending investigation or past or pending prosecution, and was killed as a result of his or her status as a witness or potential witness;
- (13) The murdered individual was an employee of an institution or facility of the department of corrections of this state or local correction agency and was killed in the course of performing his or her official duties, or the murdered individual was an inmate of such institution or facility;
- (14) The murdered individual was killed as a result of the hijacking of an airplane, train, ship, bus or other public conveyance;
- (15) The murder was committed for the purpose of concealing or attempting to conceal any felony offense defined in chapter 195 or 579;
- (16) The murder was committed for the purpose of causing or attempting to cause a person to refrain from initiating or aiding in the prosecution of a felony offense defined in chapter 195 or 579;
- (17) The murder was committed during the commission of an offense which is part of a pattern of criminal street gang activity as defined in section 578.421.
3. Statutory mitigating circumstances shall include the following:
 - (1) The defendant has no significant history of prior criminal activity;
 - (2) The murder in the first degree was committed while the defendant was under the influence of extreme mental or emotional disturbance;
 - (3) The victim was a participant in the defendant's conduct or consented to the act;
 - (4) The defendant was an accomplice in the murder in the first degree committed by another person and his or her participation was relatively minor;
 - (5) The defendant acted under extreme duress or under the substantial domination of another person;
 - (6) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired;
 - (7) The age of the defendant at the time of the offense.]

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

1 his attorney, a narrative statement of the judgment, the offense, and the punishment
2 prescribed. The report by the judge shall be in the form of a standard questionnaire
3 prepared and supplied by the supreme court of Missouri.

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

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

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

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

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

15 4. Both the defendant and the state shall have the right to submit briefs within the
16 time provided by the supreme court, and to present oral argument to the supreme
17 court.

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

22 (1) Affirm the sentence of death; or

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

25 (3) Set the sentence aside and remand the case for retrial of the punishment hearing.

26 A new jury shall be selected or a jury may be waived by agreement of both parties
27 and then the punishment trial shall proceed in accordance with this chapter, with the
28 exception that the evidence of the guilty verdict shall be admissible in the new trial
29 together with the official transcript of any testimony and evidence properly admitted
30 in each stage of the original trial where relevant to determine punishment.

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

44 7. In addition to the mandatory sentence review, there shall be a right of direct
45 appeal of the conviction to the supreme court of Missouri. This right of appeal may
46 be waived by the defendant. If an appeal is taken, the appeal and the sentence review
47 shall be consolidated for consideration. The court shall render its decision on legal
48 errors enumerated, the factual substantiation of the verdict, and the validity of the

1 sentence.]" and

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