

SECOND REGULAR SESSION

# HOUSE BILL NO. 1756

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HANNEGAN.

4339H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal section 565.020, RSMo, and to enact in lieu thereof two new sections relating to murder in the first degree, with a penalty provision.

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

Section A. Section 565.020, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 565.020 and 565.028, to read as follows:

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

2. The offense of murder in the first degree is a class A felony, and, if a person is eighteen years of age or older at the time of the offense, the punishment shall be either death or imprisonment for life without eligibility for probation or parole, or release except by act of the governor; **except that, a person who raises the matter of having suffered from a serious mental illness at the time of the commission of the offense and is found to have suffered from a serious mental illness at the time of the commission of the offense under section 565.028 shall be ineligible for a sentence of death due to a serious mental illness.** If a person has not reached his or her eighteenth birthday at the time of the commission of the offense, the punishment shall be as provided under section 565.033.

**565.028. 1. (1) Subject to subdivision (2) of this subsection, a defendant has a serious mental illness if the following apply:**

**(a) The defendant has been diagnosed as described in paragraph (b) of this subdivision with one or more of the following conditions:**

**a. Schizophrenia;**

**b. Schizoaffective disorder;**

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.

- 7           **c. Bipolar disorder, with psychotic features;**  
8           **d. Major depressive disorder, with psychotic features;**  
9           **e. Delusional disorders;**  
10          **f. Traumatic brain injury; or**  
11          **g. Posttraumatic stress disorder (PTSD); and**
- 12          **(b) At the time of the commission of the offense, the condition or conditions**  
13 **described in paragraph (a) of this subdivision with which the defendant has been**  
14 **diagnosed, while not meeting the standard to be found not guilty by reason of mental**  
15 **disease or defect under section 552.030, the standard to be found incompetent to stand trial**  
16 **as described in section 552.020, or the standard for mental disease or defect under**  
17 **subdivision (8) of subsection 2 of section 552.015, nevertheless significantly impaired the**  
18 **defendant's capacity to do one or more of the following:**
- 19           **a. Exercise rational judgment in relation to the defendant's conduct;**  
20           **b. Conform the defendant's conduct to the requirements of law; or**  
21           **c. Appreciate the nature, consequences, or wrongfulness of the defendant's conduct.**
- 22          **(2) A disorder manifested primarily by repeated criminal conduct or attributable**  
23 **solely to the acute effects of voluntary use of alcohol or any other drug of abuse does not,**  
24 **solely alone, constitute a serious mental illness for purposes of this section.**
- 25          **(3) Evidence to show the existence of a serious mental illness may include, but is not**  
26 **limited to, the following:**
- 27           **(a) Existence of active psychosis;**  
28           **(b) Delusions;**  
29           **(c) Hallucinations;**  
30           **(d) Disorganized or irrational thinking;**  
31           **(e) Erroneous perceptions of reality;**  
32           **(f) Mania;**  
33           **(g) Significant disruptions of consciousness and memory;**  
34           **(h) Grossly disorganized or abnormal motor behavior, including catatonia; or**  
35           **(i) Any other evidence relevant to show the conditions described under paragraphs**  
36 **(a) and (b) of subdivision (1) of this section.**
- 37          **2. The diagnosis of a defendant with a condition or conditions described in**  
38 **paragraph (a) of subdivision (1) of subsection 1 of this section may be made at any time**  
39 **prior to, on, or after the date of the commission of the offense or the day on which the**  
40 **defendant raises the matter of having suffered from a serious mental illness at the time of**  
41 **the commission of the offense under subsection 3 of this section. Diagnosis of the condition**  
42 **or conditions after the date of the commission of the offense does not preclude the**

43 defendant from presenting evidence that the defendant had a serious mental illness at the  
44 time of the commission of the offense or, in the circumstances described in subsection 3, 4,  
45 5, or 6 of this section, from having the benefit of the rebuttable presumption described in  
46 such subsections.

47 3. A defendant charged with murder in the first degree may raise the issue of a  
48 serious mental illness at the time of the commission of the offense to exempt himself or  
49 herself from eligibility for a sentence of death.

50 4. (1) If the defense raises the matter of the defendant's serious mental illness at  
51 the time of the commission of the offense, the court shall, at the request of the state or the  
52 defense, order an evaluation of the defendant in accordance with the provisions of this  
53 section.

54 (2) The state shall not use any evidence against the defendant acquired as a result  
55 of any evaluation ordered under this section or call any examiner who performed such an  
56 evaluation on the defendant as a witness against the defendant unless and until the defense  
57 presents such evidence at a hearing on the matter of the defendant's serious mental illness  
58 at the time of the commission of the offense. The state may then call the examiner and use  
59 the information the examiner obtained at the hearing on this issue.

60 (3) Neither the appointment nor the testimony of an examiner in an evaluation  
61 ordered under this section shall preclude the prosecution or defense from calling other  
62 witnesses or presenting other evidence on the issue of the defendant's serious mental illness.

63 (4) No statement that a defendant makes in an evaluation ordered under this  
64 section or in a pretrial hearing or proceeding under this section relating to the defendant's  
65 serious mental illness at the time of the commission of the offense shall be used against the  
66 defendant on the issue of guilt in any criminal action or proceeding.

67 5. If a defendant raises the matter of having suffered from a serious mental illness  
68 at the time of the commission of the offense and submits prima facie evidence that he or she  
69 has a serious mental illness as described in paragraph (a) of subdivision (1) of subsection  
70 1 of this section and that the condition existed at the time of the commission of the offense,  
71 the prosecution shall have an opportunity to present evidence to contest the serious mental  
72 illness or to rebut the presumption that the condition, if present, significantly impaired the  
73 defendant's capacity at the time of the commission of the offense in a manner described in  
74 subparagraph a., b., or c. of paragraph (b) of subdivision (1) of subsection 1 of this section.  
75 The prosecution shall have the burden of proving, beyond a reasonable doubt, that the  
76 serious mental illness did not exist at the time of the commission of the offense or, if  
77 present, to establish beyond a reasonable doubt that the serious mental illness did not  
78 significantly impair the defendant's capacity at the time of the commission of the offense

79 in a manner described in subparagraph a., b., or c. of paragraph (b) of subdivision (1) of  
80 subsection 1 of this section.

81         **6. (1) If a defendant raises the matter of having suffered from a serious mental**  
82 **illness at the time of the commission of the offense, and the state contests the application**  
83 **of the exemption based on the information the defense provides, the defense shall be**  
84 **entitled to a pretrial hearing and determination on eligibility for the exemption.**

85         **(2) If the defense raises the matter, the defense shall be entitled to a hearing on the**  
86 **issues that would exempt the defendant from eligibility for a sentence of death under this**  
87 **section. The determination of eligibility for the exemption shall be made pretrial by the**  
88 **court.**

89         **(3) At such a hearing, the defense shall produce evidence, from any source, to**  
90 **establish a prima facie case that the defendant suffered from a serious mental illness, as**  
91 **described in paragraph (a) of subdivision (1) of subsection 1 of this section. If the defense**  
92 **submits prima facie evidence that the defendant had a serious mental illness at the time of**  
93 **the commission of the offense, it shall be rebuttably presumed that the condition**  
94 **significantly impaired the defendant's capacity at the time of the commission of the offense**  
95 **in a manner described in subparagraph a., b., or c. of paragraph (b) of subdivision (1) of**  
96 **subsection 1 of this section.**

97         **(4) The state may then present evidence to rebut the presumption and establish,**  
98 **beyond a reasonable doubt, that the defendant did not suffer from a serious mental illness**  
99 **at the time of the commission of the offense or that the serious mental illness, if present, did**  
100 **not substantially impair the capacity of the defendant at the time of the commission of the**  
101 **offense in a manner described in subparagraph a., b., or c. of paragraph (b) of subdivision**  
102 **(1) of subsection 1 of this section.**

103         **(5) If the court finds that the state has failed to rebut the presumption; or the state**  
104 **failed to present evidence to prove, beyond a reasonable doubt, that the defendant did not**  
105 **have a serious mental illness; or the state failed to prove that the serious mental illness, if**  
106 **present, did not substantially impair the defendant's capacity at the time of the commission**  
107 **of the offense, the court shall find that the exemption applies and direct judgment on the**  
108 **matter of the exemption in favor of the defendant.**

109         **(6) If the defense elects to have the court take up the issue of the defendant's serious**  
110 **mental illness before the trial, and a determination is made that the exemption does not**  
111 **apply, it shall not prejudice the defendant's right to have the issue submitted to the trier**  
112 **of fact in the sentencing phase of the trial following a finding of guilt on the charge of**  
113 **murder in the first degree in a case in which the death penalty was not waived.**

114           **7. A defendant's pleading of not guilty due to mental disease or defect or incapacity**  
115 **to stand trial, or a finding after such a plea that the defendant does not suffer from mental**  
116 **disease or defect or has capacity to stand trial shall not preclude the defendant from**  
117 **raising the matter of the defendant's serious mental illness at the time of the commission**  
118 **of the offense under this section and, if a defendant so raises that matter, shall not limit or**  
119 **affect any of the procedures described in this section or the authority of a court to make**  
120 **any finding described in this section.**

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