

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for
2 Senate Bill No. 72, Page 71, Section 561.026, Line 7, by inserting after all of said section and line
3 the following:
4

5 "565.030. 1. Where murder in the first degree is charged but not submitted or where the
6 state waives the death penalty, the submission to the trier and all subsequent proceedings in the case
7 shall proceed as in all other criminal cases.

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

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

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

Action Taken _____ Date _____

1 The trier shall assess and declare the punishment at life imprisonment without eligibility for
 2 probation, parole, or release except by act of the governor:

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

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

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

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

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

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

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

30 7. The provisions of this section shall only govern offenses committed on or after August
 31 28, 2001."; and

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