

SECOND REGULAR SESSION

# HOUSE BILL NO. 2785

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SPARKS.

5772H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 565.030, 565.032, and 566.060, RSMo, and to enact in lieu thereof three new sections relating to sodomy in the first degree, with penalty provisions.

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

Section A. Sections 565.030, 565.032, and 566.060, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 565.030, 565.032, and 566.060,  
3 to read as follows:

565.030. 1. Where murder in the first degree **or sodomy in the first degree under**  
2 **subdivision (4) of subsection 2 of section 566.060** is charged but not submitted or where the  
3 state waives the death penalty, the submission to the trier and all subsequent proceedings in  
4 the case shall proceed as in all other criminal cases.

5 2. Where murder in the first degree **or sodomy in the first degree under subdivision**  
6 **(4) of subsection 2 of section 566.060** is submitted to the trier without a waiver of the death  
7 penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier  
8 shall decide only whether the defendant is guilty or not guilty of any submitted offense. The  
9 issue of punishment shall not be submitted to the trier at the first stage. If an offense is  
10 charged other than:

11 (1) Murder in the first degree in a count together with a count of murder in the first  
12 degree; **or**

13 (2) **Sodomy in the first degree under subdivision (4) of subsection 2 of section**  
14 **566.060 in a count together with a count of sodomy in the first degree,**

15

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.

16 the trial judge shall assess punishment on any such offense according to law, after the  
17 defendant is found guilty of such offense and after he finds the defendant to be a prior  
18 offender pursuant to chapter 558.

19         3. If murder in the first degree **or sodomy in the first degree under subdivision (4)**  
20 **of subsection 2 of section 566.060** is submitted and the death penalty was not waived but the  
21 trier finds the defendant guilty of a lesser homicide **or sodomy**, a second stage of the trial  
22 shall proceed as in all other criminal cases. The attorneys may then argue as in other criminal  
23 cases the issue of punishment, after which the trier shall assess and declare the punishment as  
24 in all other criminal cases.

25         4. If the trier at the first stage of a trial where the death penalty was not waived finds  
26 the defendant guilty of murder in the first degree **or sodomy in the first degree under**  
27 **subdivision (4) of subsection 2 of section 566.060**, a second stage of the trial shall proceed  
28 at which the only issue shall be the punishment to be assessed and declared. Evidence in  
29 aggravation and mitigation of punishment, including but not limited to evidence supporting  
30 any of the aggravating or mitigating circumstances listed in subsection 2 or 3 of section  
31 565.032, may be presented subject to the rules of evidence at criminal trials. Such evidence  
32 may include, within the discretion of the court, evidence concerning the murder **or sodomy**  
33 victim and the impact of the offense upon the family of the victim and others. Rebuttal and  
34 surrebuttal evidence may be presented. The state shall be the first to proceed. If the trier is a  
35 jury it shall be instructed on the law. The attorneys may then argue the issue of punishment to  
36 the jury, and the state shall have the right to open and close the argument. The trier shall  
37 assess and declare the punishment at life imprisonment without eligibility for probation,  
38 parole, or release except by act of the governor:

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

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

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

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

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50 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set  
51 out in writing the aggravating circumstance or circumstances listed in subsection 2 of section  
52 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed

53 before the case is submitted that if it is unable to decide or agree upon the punishment the  
54 court shall assess and declare the punishment at life imprisonment without eligibility for  
55 probation, parole, or release except by act of the governor or death. The court shall follow the  
56 same procedure as set out in this section whenever it is required to determine punishment for  
57 murder in the first degree **or sodomy in the first degree under subdivision (4) of subsection**  
58 **2 of section 566.060.**

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

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

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

565.032. 1. In all cases of murder in the first degree **or sodomy in the first degree**  
2 **under subdivision (4) of subsection 2 of section 566.060** for which the death penalty is  
3 authorized, the judge in a jury-waived trial shall consider, or shall include in his or her  
4 instructions to the jury for it to consider:

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

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

11

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

19           2. Statutory aggravating circumstances for a murder in the first degree offense **or for**  
20 **sodomy in the first degree under subdivision (4) of subsection 2 of section 566.060** shall  
21 be limited to the following:

22           (1) The offense was committed by a person with a prior record of conviction for  
23 murder in the first degree, or the offense was committed by a person who has one or more  
24 serious assaultive criminal convictions, **or the offense was committed by a person with a**  
25 **prior record of conviction for sodomy in the first degree under subdivision (4) of**  
26 **subsection 2 of section 566.060, or the offense was committed by a person who has one**  
27 **or more serious criminal convictions for sexual assault;**

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

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

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

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

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

44           (7) The murder in the first degree **or the sodomy in the first degree under**  
45 **subdivision (4) of subsection 2 of section 566.060** was outrageously or wantonly vile,  
46 horrible, or inhuman in that it involved torture, or depravity of mind;

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

49           (9) The murder in the first degree **or the sodomy in the first degree under**  
50 **subdivision (4) of subsection 2 of section 566.060** was committed by a person in, or who has  
51 escaped from, the lawful custody of a peace officer or place of lawful confinement;

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

55 (11) The murder in the first degree was committed while the defendant was engaged  
56 in the perpetration or was aiding or encouraging another person to perpetrate or attempt to  
57 perpetrate a felony of any degree of rape, sodomy, burglary, robbery, kidnapping, or any  
58 felony offense in chapter 195 or 579;

59 (12) The murdered individual was a witness or potential witness in any past or  
60 pending investigation or past or pending prosecution, and was killed as a result of his or her  
61 status as a witness or potential witness;

62 (13) The murdered individual was an employee of an institution or facility of the  
63 department of corrections of this state or local correction agency and was killed in the course  
64 of performing his or her official duties, or the murdered individual was an inmate of such  
65 institution or facility;

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

68 (15) The murder was committed for the purpose of concealing or attempting to  
69 conceal any felony offense defined in chapter 195 or 579;

70 (16) The murder was committed for the purpose of causing or attempting to cause a  
71 person to refrain from initiating or aiding in the prosecution of a felony offense defined in  
72 chapter 195 or 579;

73 (17) The murder was committed during the commission of an offense which is part of  
74 a pattern of criminal street gang activity as defined in section 578.421.

75 3. Statutory mitigating circumstances shall include the following:

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

77 (2) The murder in the first degree **or the sodomy in the first degree under**  
78 **subdivision (4) of subsection 2 of section 566.060** was committed while the defendant was  
79 under the influence of extreme mental or emotional disturbance;

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

81 (4) The defendant was an accomplice in the murder in the first degree committed by  
82 another person and his or her participation was relatively minor;

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

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

87 (7) The age of the defendant at the time of the offense.

566.060. 1. A person commits the offense of sodomy in the first degree if he or she  
2 has deviate sexual intercourse with another person who is incapacitated, incapable of consent,  
3 or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion  
4 includes the use of a substance administered without a victim's knowledge or consent which

5 renders the victim physically or mentally impaired so as to be incapable of making an  
6 informed consent to sexual intercourse.

7         2. The offense of sodomy in the first degree or an attempt to commit sodomy in the  
8 first degree is a felony for which the authorized term of imprisonment is life imprisonment or  
9 a term of years not less than five years, unless:

10         (1) The offense is an aggravated sexual offense, in which case the authorized term of  
11 imprisonment is life imprisonment or a term of years not less than ten years;

12         (2) The person is a persistent or predatory sexual offender as defined in section  
13 566.125 and subjected to an extended term of imprisonment under said section;

14         (3) The victim is a child less than twelve years of age, in which case the required term  
15 of imprisonment is life imprisonment without eligibility for probation or parole until the  
16 offender has served not less than thirty years of such sentence or unless the offender has  
17 reached the age of seventy-five years and has served at least fifteen years of such sentence,  
18 unless such sodomy in the first degree is described under subdivision (4) of this subsection; or

19         (4) The victim is a child less than twelve years of age and such sodomy in the first  
20 degree or attempt to commit sodomy in the first degree was outrageously or wantonly vile,  
21 horrible or inhumane, in that it involved torture or depravity of mind, in which case the  
22 required term of imprisonment is life imprisonment without eligibility for probation, parole or  
23 conditional release, **or the penalty may be death.**

24         3. Subsection 4 of section 558.019 shall not apply to the sentence of a person who has  
25 been found guilty of sodomy in the first degree or an attempt to commit sodomy in the first  
26 degree when the victim is less than twelve years of age, and "life imprisonment" shall mean  
27 imprisonment for the duration of a person's natural life for the purposes of this section.

28         4. No person found guilty of sodomy in the first degree or an attempt to commit  
29 sodomy in the first degree shall be granted a suspended imposition of sentence or suspended  
30 execution of sentence.

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