

SECOND REGULAR SESSION

HOUSE BILL NO. 2521

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE REED.

4944H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 546.680, 546.690, 546.700, 546.710, 546.720, 546.730, 546.740, 546.750, 546.800, 546.810, 546.820, 557.021, 565.004, 565.005, 565.006, 565.020, 565.030, 565.032, 565.035, and 565.040, RSMo, and to enact in lieu thereof five new sections relating to repealing the death penalty, with a penalty provision.

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

Section A. Sections 546.680, 546.690, 546.700, 546.710, 546.720, 546.730, 546.740, 546.750, 546.800, 546.810, 546.820, 557.021, 565.004, 565.005, 565.006, 565.020, 565.030, 565.032, 565.035, and 565.040, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 557.021, 565.004, 565.006, 565.020, and 565.040, to read as follows:

557.021. 1. Any offense defined outside this code ~~[which]~~ **that** is declared to be a misdemeanor without specification of the penalty therefor is a class A misdemeanor.

2. Any offense defined outside this code ~~[which]~~ **that** is declared to be a felony without specification of the penalty therefor is a class E felony.

3. For the purpose of applying the extended term provisions of section 558.016 and the minimum prison term provisions of section 558.019 and for determining the penalty for attempts, offenses defined outside of this code shall be classified as follows:

(1) If the offense is a felony:

(a) It is a class A felony if the authorized penalty includes ~~[death,]~~ life imprisonment; **imprisonment for life without eligibility for probation, parole, or release except by act of the governor;** or imprisonment for a term of twenty years or more;

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.

- 12 (b) It is a class B felony if the maximum term of imprisonment authorized exceeds
13 ten years but is less than twenty years;
- 14 (c) It is a class C felony if the maximum term of imprisonment authorized is ten
15 years;
- 16 (d) It is a class D felony if the maximum term of imprisonment exceeds four years but
17 is less than ten years;
- 18 (e) It is a class E felony if the maximum term of imprisonment is four years or less;
- 19 (2) If the offense is a misdemeanor:
- 20 (a) It is a class A misdemeanor if the authorized imprisonment exceeds six months in
21 jail;
- 22 (b) It is a class B misdemeanor if the authorized imprisonment exceeds thirty days but
23 is not more than six months;
- 24 (c) It is a class C misdemeanor if the authorized imprisonment is thirty days or less;
- 25 (d) It is a class D misdemeanor if it includes a mental state as an element of the
26 offense and there is no authorized imprisonment;
- 27 (e) It is an infraction if there is no authorized imprisonment.

2 565.004. 1. Each homicide offense ~~[which]~~ **that** is lawfully joined in the same
3 indictment or information together with any homicide offense or offense other than a
4 homicide shall be charged together with such offense in separate counts. A count charging
5 any offense of homicide may only be charged and tried together with one or more counts of
6 any other homicide or offense other than a homicide as provided in subsection 2 of section
7 545.140. Except as provided in subsections 2~~[5]~~ **and** 3~~[5 and 4]~~ of this section, no murder in
8 the first degree offense may be tried together with any offense other than murder in the first
9 degree. In the event of a joinder of homicide offenses, all offenses charged which are
10 supported by the evidence in the case, together with all proper lesser offenses under section
11 565.029, shall, when requested by one of the parties or the court, be submitted to the jury or,
12 in a jury-waived trial, considered by the judge.

13 2. A count charging any offense of homicide of a particular individual may be joined
14 in an indictment or information and tried with one or more counts charging alternatively any
15 other homicide or offense other than a homicide committed against that individual. The state
16 shall not be required to make an election as to the alternative count on which it will proceed.
17 This subsection in no way limits the right to try in the conjunctive, where they are properly
18 joined under subsection 1 of this section, either separate offenses other than murder in the
19 first degree or separate offenses of murder in the first degree committed against different
20 individuals.

21 3. When a defendant has been charged and proven before trial to be a prior offender
pursuant to chapter 558 so that the judge shall assess punishment and not a jury for an offense

22 other than murder in the first degree, that offense may be tried and submitted to the trier
23 together with any murder in the first degree charge with which it is lawfully joined. In such
24 case the judge will assess punishment on any offense joined with a murder in the first degree
25 charge according to law and, when the trier is a jury, it shall be instructed upon punishment on
26 the charge of murder in the first degree ~~[in accordance with section 565.030.~~

27 ~~4. When the state waives the death penalty for a murder first degree offense, that~~
28 ~~offense may be tried and submitted to the trier together with any other charge with which it is~~
29 ~~lawfully joined].~~

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

7 2. No defendant who pleads guilty to a homicide offense or who is found guilty of a
8 homicide offense after trial to the court without a jury shall be permitted a trial by jury on the
9 issue of the punishment to be imposed, except by agreement of the state.

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

13 4.] Any waiver of a jury trial and agreement permitted by this section shall be entered
14 in the court record.

565.020. 1. A person commits the offense of murder in the first degree if he or she
2 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
6 of the governor. If a person has not reached his or her eighteenth birthday at the time of the
7 commission of the offense, the punishment shall be as provided under section 565.033.

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
3 the court to life imprisonment without eligibility for probation, parole, or release except by
4 act of the governor~~[, with the exception that when a specific aggravating circumstance found~~
5 ~~in a case is held to be unconstitutional or invalid for another reason, the supreme court of~~
6 ~~Missouri is further authorized to remand the case for resentencing or retrial of the punishment~~
7 ~~pursuant to subsection 5 of section 565.035].~~

8 2. In ~~[the event that]~~ any **case in which a death sentence has previously been**
9 imposed pursuant to this chapter ~~[is held to be unconstitutional,]~~ **but has not been executed,**
10 the trial court ~~[which]~~ **that** previously sentenced the defendant to death shall cause the
11 defendant to be brought before the court and shall sentence the defendant to life imprisonment
12 without eligibility for probation, parole, or release except by act of the governor~~[-with the~~
13 ~~exception that when a specific aggravating circumstance found in a case is held to be~~
14 ~~inapplicable, unconstitutional or invalid for another reason, the supreme court of Missouri is~~
15 ~~further authorized to remand the case for retrial of the punishment pursuant to subsection 5 of~~
16 ~~section 565.035].~~

2 ~~[546.680. When judgment of death is rendered by any court of~~
3 ~~competent jurisdiction, a warrant signed by the judge and attested by the clerk~~
4 ~~under the seal of the court must be drawn and delivered to the sheriff. It must~~
5 ~~state the conviction and judgment and appoint a day on which the judgment~~
6 ~~must be executed, which must not be less than thirty nor more than sixty days~~
7 ~~from the date of judgment, and must direct the sheriff to deliver the defendant,~~
8 ~~at a time specified in said order, not more than ten days from the date of~~
9 ~~judgment, to the chief administrative officer of a correctional facility of the~~
~~department of corrections, for execution.]~~

2 ~~[546.690. The judge of a court at which a conviction is had must,~~
3 ~~immediately after the conviction, transmit to the governor of the state, by mail~~
4 ~~or otherwise, a statement of the conviction and judgment.]~~

2 ~~[546.700. Whenever, for any reason, any convict sentenced to the~~
3 ~~punishment of death shall not have been executed pursuant to such sentence,~~
4 ~~and the cause shall stand in full force, the supreme court, or the court of the~~
5 ~~county in which the conviction was had, on the application of the prosecuting~~
6 ~~attorney, shall issue a writ of habeas corpus to bring such convict before the~~
7 ~~court; or if he be at large, a warrant for his apprehension may be issued by~~
~~such court, or any judge thereof.]~~

2 ~~[546.710. Upon such convicted offender being brought before the~~
3 ~~court, they shall proceed to inquire into the facts, and if no legal reasons exist~~
4 ~~against the execution of sentence, such court shall issue a warrant to the~~
5 ~~director of the department of corrections, for the execution of the prisoner at~~
6 ~~the time therein specified, which execution shall be obeyed by the director~~
~~accordingly.]~~

2 ~~[546.720. 1. The manner of inflicting the punishment of death shall be~~
3 ~~by the administration of lethal gas or by means of the administration of lethal~~
4 ~~injection. And for such purpose the director of the department of corrections is~~
5 ~~hereby authorized and directed to provide a suitable and efficient room or~~
6 ~~place, enclosed from public view, within the walls of a correctional facility of~~
~~the department of corrections, and the necessary appliances for carrying into~~

7 execution the death penalty by means of the administration of lethal gas or by
8 ~~means of the administration of lethal injection.~~

9 2. ~~The director of the department of corrections shall select an~~
10 ~~execution team which shall consist of those persons who administer lethal gas~~
11 ~~or lethal chemicals and those persons, such as medical personnel, who provide~~
12 ~~direct support for the administration of lethal gas or lethal chemicals. The~~
13 ~~identities of members of the execution team, as defined in the execution~~
14 ~~protocol of the department of corrections, shall be kept confidential.~~
15 ~~Notwithstanding any provision of law to the contrary, any portion of a~~
16 ~~record that could identify a person as being a current or former member of an~~
17 ~~execution team shall be privileged and shall not be subject to discovery,~~
18 ~~subpoena, or other means of legal compulsion for disclosure to any person or~~
19 ~~entity, the remainder of such record shall not be privileged or closed unless~~
20 ~~protected from disclosure by law. The section of an execution protocol that~~
21 ~~directly relates to the administration of lethal gas or lethal chemicals is an open~~
22 ~~record, the remainder of any execution protocol of the department of~~
23 ~~corrections is a closed record.~~

24 3. ~~A person may not, without the approval of the director of the~~
25 ~~department of corrections, knowingly disclose the identity of a current or~~
26 ~~former member of an execution team or disclose a record knowing that it could~~
27 ~~identify a person as being a current or former member of an execution team.~~
28 ~~Any person whose identity is disclosed in violation of this section shall:~~

29 (1) ~~Have a civil cause of action against a person who violates this~~
30 ~~section;~~

31 (2) ~~Be entitled to recover from any such person:~~

32 (a) ~~Actual damages; and~~

33 (b) ~~Punitive damages on a showing of a willful violation of this~~
34 ~~section.~~

35 4. ~~Notwithstanding any provision of law to the contrary, if a member~~
36 ~~of the execution team is licensed by a board or department, the licensing board~~
37 ~~or department shall not censure, reprimand, suspend, revoke, or take any other~~
38 ~~disciplinary action against the person's license because of his or her~~
39 ~~participation in a lawful execution. All members of the execution team are~~
40 ~~entitled to coverage under the state legal expense fund established by section~~
41 ~~105.711 for conduct of such execution team member arising out of and~~
42 ~~performed in connection with his or her official duties on behalf of the state or~~
43 ~~any agency of the state, provided that moneys in this fund shall not be~~
44 ~~available for payment of claims under chapter 287.]~~

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

2 [546.740. The chief administrative officer of the correctional center, or
3 his duly appointed representative shall be present at the execution and the
4 director of the department of corrections shall invite the presence of the
5 attorney general of the state, and at least eight reputable citizens, to be selected
by him; and he shall at the request of the defendant, permit such clergy or

6 religious leaders, not exceeding two, as the defendant may name, and any
7 person, other than another incarcerated offender, relatives or friends, not to
8 exceed five, to be present at the execution, together with such peace officers as
9 he may think expedient, to witness the execution; but no person under twenty-
10 one years of age shall be allowed to witness the execution.]

2 [546.750. After the execution the chief administrative officer of the
3 correctional facility shall make a return upon the death warrant to the court by
4 which the judgment was rendered, showing the time, mode and manner in
which it was executed.]

2 [546.800. If, after any female convict shall be sentenced to the
3 punishment of death, the officer having charge of her person shall have reason
4 to suspect that she is pregnant, he shall in like manner summon a jury of six
5 persons, not less than three of whom shall be physicians, and shall give notice
6 thereof to the prosecuting attorney of the county where such criminal
7 proceedings originated, or to the circuit attorney of the city of St. Louis, if
8 such criminal proceedings originated in that city, who shall attend, and the
proceedings shall be had as provided.]

2 [546.810. The inquisition shall be signed by the jury and the officer in
3 charge of such convict, and if it appear that such female convict is pregnant
4 with child, her execution shall be suspended and the inquisition shall be
transmitted to the governor.]

2 [546.820. Whenever the governor shall be satisfied that the cause of
3 such suspension no longer exists, he shall issue his warrant, appointing a day
4 for the execution of such convict, pursuant to her sentence; or he may, at his
5 discretion, commute her punishment to imprisonment in the penitentiary for
life.]

2 [565.005. 1. At a reasonable time before the commencement of the
3 first stage of any trial of murder in the first degree at which the death penalty is
4 not waived, the state and defendant, upon request and without order of the
5 court, shall serve counsel of the opposing party with:

6 (1) A list of all aggravating or mitigating circumstances as provided in
7 subsection 1 of section 565.032, which the party intends to prove at the second
8 stage of the trial;

9 (2) The names of all persons whom the party intends to call as
10 witnesses at the second stage of the trial;

11 (3) Copies or locations and custodian of any books, papers,
12 documents, photographs or objects which the party intends to offer at the
13 second stage of the trial. If copies of such materials are not supplied to
14 opposing counsel, the party shall cause them to be made available for
inspection and copying without order of the court.

15 2. The disclosures required in subsection 1 of this section are
16 supplemental to those required by rules of the supreme court relating to a
17 continuing duty to disclose information, the use of matters disclosed, matters

18 not subject to disclosure, protective orders, and sanctions for failure to comply
19 with an applicable discovery rule or order, all of which shall also apply to any
20 disclosure required by this section.]

2 ~~[565.030. 1. Where murder in the first degree is charged but not~~
3 ~~submitted or where the state waives the death penalty, the submission to the~~
4 ~~trier and all subsequent proceedings in the case shall proceed as in all other~~
5 ~~criminal cases.~~

6 ~~2. Where murder in the first degree is submitted to the trier without a~~
7 ~~waiver of the death penalty, the trial shall proceed in two stages before the~~
8 ~~same trier. At the first stage the trier shall decide only whether the defendant~~
9 ~~is guilty or not guilty of any submitted offense. The issue of punishment shall~~
10 ~~not be submitted to the trier at the first stage. If an offense is charged other~~
11 ~~than murder in the first degree in a count together with a count of murder in the~~
12 ~~first degree, the trial judge shall assess punishment on any such offense~~
13 ~~according to law, after the defendant is found guilty of such offense and after~~
14 ~~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~~
16 ~~not waived but the trier finds the defendant guilty of a lesser homicide, a~~
17 ~~second stage of the trial shall proceed as in all other criminal cases. The~~
18 ~~attorneys may then argue as in other criminal cases the issue of punishment,~~
19 ~~after which the trier shall assess and declare the punishment as in all other~~
20 ~~criminal cases.~~

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

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

38 ~~(2) If the trier does not find beyond a reasonable doubt at least one of~~
39 ~~the statutory aggravating circumstances set out in subsection 2 of section~~
40 ~~565.032; or~~

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

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

47
48 ~~If the trier assesses and declares the punishment at death it shall, in its findings~~
49 ~~or verdict, set out in writing the aggravating circumstance or circumstances~~
50 ~~listed in subsection 2 of section 565.032 which it found beyond a reasonable~~
51 ~~doubt. If the trier is a jury it shall be instructed before the case is submitted~~
52 ~~that if it is unable to decide or agree upon the punishment the court shall assess~~
53 ~~and declare the punishment at life imprisonment without eligibility for~~
54 ~~probation, parole, or release except by act of the governor or death. The court~~
55 ~~shall follow the same procedure as set out in this section whenever it is~~
56 ~~required to determine punishment for murder in the first degree.~~

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

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

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

2 ~~[565.032. 1. In all cases of murder in the first degree for which the~~
3 ~~death penalty is authorized, the judge in a jury waived trial shall consider, or~~
4 ~~shall include in his or her instructions to the jury for it to consider:~~

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

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

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

21 2. Statutory aggravating circumstances for a murder in the first degree
22 ~~offense shall be limited to the following:~~

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

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

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

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

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

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

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

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

50 ~~(9) The murder in the first degree was committed by a person in, or~~
51 ~~who has escaped from, the lawful custody of a peace officer or place of lawful~~
52 ~~confinement;~~

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

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

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

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

67 ~~(14) The murdered individual was killed as a result of the hijacking of~~
68 ~~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 his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report by the judge shall be in the form of a standard questionnaire prepared and supplied by the supreme court of Missouri.~~

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

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

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

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

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

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

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

30 ~~(1) Affirm the sentence of death; or~~

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

34 ~~(3) Set the sentence aside and remand the case for retrial of the~~
35 ~~punishment hearing. A new jury shall be selected or a jury may be waived by~~
36 ~~agreement of both parties and then the punishment trial shall proceed in~~
37 ~~accordance with this chapter, with the exception that the evidence of the guilty~~
38 ~~verdict shall be admissible in the new trial together with the official transcript~~
39 ~~of any testimony and evidence properly admitted in each stage of the original~~
40 ~~trial where relevant to determine punishment.~~

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

55 7. ~~In addition to the mandatory sentence review, there shall be a right~~
56 ~~of direct appeal of the conviction to the supreme court of Missouri. This right~~
57 ~~of appeal may be waived by the defendant. If an appeal is taken, the appeal~~
58 ~~and the sentence review shall be consolidated for consideration. The court~~
59 ~~shall render its decision on legal errors enumerated, the factual substantiation~~
60 ~~of the verdict, and the validity of the sentence.]~~

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