

SECOND REGULAR SESSION

HOUSE BILL NO. 2521

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE REED.

4944H.01I

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546.810, 546.820, 557.021, 565.004, 565.005, 565.006, 565.020, 565.030, 565.032, 565.035, and 565.040, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 557.021, 565.004, 565.006, 565.020, and 565.040, to read as follows: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 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 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 4 attempts, offenses defined outside of this code shall be classified as follows:

5 (1) If the offense is a felony:

6 (a) It is a class A felony if the authorized penalty includes [~~death~~] life imprisonment; 7 **imprisonment for life without eligibility for probation, parole, or release except by act of** 8 **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.

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

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

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
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
4 supervision and direction of the director of the department of corrections.]

5 [546.740. The chief administrative officer of the correctional center, or
2 his duly appointed representative shall be present at the execution and the
3 director of the department of corrections shall invite the presence of the
4 attorney general of the state, and at least eight reputable citizens, to be selected
5 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
5 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
9 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
5 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
6 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
15 inspection and copying without order of the court.

16 2. The disclosures required in subsection 1 of this section are
17 supplemental to those required by rules of the supreme court relating to a
18 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
565.032; or

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

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.

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

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

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

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

69 (15) The murder was committed for the purpose of concealing or
70 attempting to conceal any 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.]

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

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

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

23 4. Both the defendant and the state shall have the right to submit briefs
24 within the time provided by the supreme court, and to present oral argument to
25 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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