

SECOND REGULAR SESSION

HOUSE BILL NO. 2876

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLLINS.

5612H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 565.030 and 565.032, RSMo, and to enact in lieu thereof two new sections relating to trial procedures for murder in the first degree.

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

Section A. Sections 565.030 and 565.032, RSMo, are repealed and two new sections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

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

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

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

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.

17 4. **(1)** If the trier at the first stage of a trial where the death penalty was not waived
18 finds the defendant guilty of murder in the first degree, a second stage of the trial shall
19 proceed at which the only issue shall be the punishment to be assessed and declared. **At this**
20 **second stage, only a jury shall assess and declare punishment. If a defendant waives a**
21 **jury trial, or a jury has not been empaneled, the court shall only assess and declare**
22 **punishment as life imprisonment without eligibility for probation, parole, or release**
23 **except by act of the governor.**

24 **(2)** Evidence in aggravation and mitigation of punishment, including but not limited
25 to evidence supporting any of the aggravating or mitigating circumstances listed in subsection
26 2 or 3 of section 565.032, may be presented subject to the rules of evidence at criminal trials.
27 Such evidence may include, within the discretion of the court, evidence concerning the
28 murder victim and the impact of the offense upon the family of the victim and others.
29 Rebuttal and surrebuttal evidence may be presented. The state shall be the first to proceed. If
30 the trier is a jury, it shall be instructed on the law. The attorneys may then argue the issue of
31 punishment to the jury, and the state shall have the right to open and close the argument.

32 **(3)** The ~~[trier]~~ **jury** shall assess and declare the punishment at life imprisonment
33 without eligibility for probation, parole, or release except by act of the governor:

34 ~~[(1)]~~ **(a)** If the ~~[trier]~~ **jury** finds by a preponderance of the evidence that the defendant
35 is intellectually disabled; or

36 ~~[(2)]~~ **(b)** If the ~~[trier]~~ **jury** does not find beyond a reasonable doubt at least one of the
37 statutory aggravating circumstances set out in subsection 2 of section 565.032; or

38 ~~[(3)]~~ **(c)** If the ~~[trier]~~ **jury** concludes that there is evidence in mitigation of
39 punishment, including but not limited to evidence supporting the statutory mitigating
40 circumstances listed in subsection 3 of section 565.032, which is sufficient to outweigh the
41 evidence in aggravation of punishment found by the trier; or

42 ~~[(4)]~~ **(d)** If the ~~[trier]~~ **jury** decides under all of the circumstances not to assess and
43 declare the punishment at death. ~~[If the trier is a]~~ **The jury [it]** shall be so instructed.

44
45 If the ~~[trier]~~ **jury** assesses and declares the punishment at death, it shall, in its findings or
46 verdict, set out in writing the aggravating circumstance or circumstances listed in subsection 2
47 of section 565.032 which it found beyond a reasonable doubt. If the trier is a jury, it shall be
48 instructed before the case is submitted that if it is unable to decide or agree upon the
49 punishment the court shall assess and declare the punishment at life imprisonment without
50 eligibility for probation, parole, or release except by act of the governor ~~[or death. The court~~
51 ~~shall follow the same procedure as set out in this section whenever it is required to determine~~
52 ~~punishment for murder in the first degree]. Any defendant whose sentence was assessed~~
53 **prior to August 28, 2026, by a judge after a jury was unable to reach a unanimous**

54 **decision shall, on motion in the court where the original sentence was assessed or in the**
55 **circuit court of the county where the defendant is currently incarcerated, be resentenced**
56 **to life imprisonment without eligibility for probation, parole, or release except by act of**
57 **the governor.**

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

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

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

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

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

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

10

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

18 2. Statutory aggravating circumstances for a murder in the first degree offense shall
19 be limited to the following:

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

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

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

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

31 (5) The murder in the first degree was committed against a judicial officer, former
32 judicial officer, prosecuting attorney or former prosecuting attorney, circuit attorney or former
33 circuit attorney, assistant prosecuting attorney or former assistant prosecuting attorney,
34 assistant circuit attorney or former assistant circuit attorney, peace officer or former peace
35 officer, elected official or former elected official during or because of the exercise of his
36 official duty;

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

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

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

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

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

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

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

55 (13) The murdered individual was an employee of an institution or facility of the
56 department of corrections of this state or local correction agency and was killed in the course

57 of performing his or her official duties, or the murdered individual was an inmate of such
58 institution or facility;

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

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

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

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

68 3. Statutory mitigating circumstances shall include the following:

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

70 (2) The murder in the first degree was committed while the defendant was under the
71 influence of extreme mental or emotional disturbance;

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

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

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

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

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

✓