

SECOND REGULAR SESSION

HOUSE BILL NO. 2348

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PROUDIE.

5706H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 565.030, RSMo, and to enact in lieu thereof one new section relating to jury instructions for the offense of murder in the first degree.

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

Section A. Section 565.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 565.030, to read as follows:

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

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

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

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

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

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

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

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41 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set
42 out in writing the aggravating circumstance or circumstances listed in subsection 2 of section
43 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed
44 before the case is submitted that if it is unable to decide or agree upon the punishment the
45 court shall assess and declare the punishment at life imprisonment without eligibility for
46 probation, parole, or release except by act of the governor ~~[or death]~~. The court shall follow
47 the same procedure as set out in this section whenever it is required to determine punishment
48 for murder in the first degree.

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

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

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

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