

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for House Bill Nos. 1108 & 1181, Page 23, Section 558.031, Line 41,
2 by inserting after all of the said section and line the following:

3
4 "565.003. 1. (1) The culpable mental state necessary for a homicide offense may be found to exist if
5 the only difference between what actually occurred and what was the object of the offender's state of mind is
6 that a different person or persons were killed.

7 (2) It shall not be a defense to a homicide charge that the identity of the person the offender intended
8 to kill cannot be established. If the state proves beyond a reasonable doubt that the offender had the requisite
9 mental state toward a specific person or a general class of persons who are not identified or who are not
10 identifiable, such intent shall be transferred to a person who is killed by the offender while such mental state
11 existed.

12 2. The length of time which transpires between conduct which results in a death and is the basis of a
13 homicide offense and the event of such death is no defense to any charge of homicide.

14 565.030. 1. Where murder in the first degree is charged but not submitted or where the state waives
15 the death penalty, the submission to the trier and all subsequent proceedings in the case shall proceed as in all
16 other criminal cases.

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

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

28 4. If the trier at the first stage of a trial where the death penalty was not waived finds the defendant
29 guilty of murder in the first degree, a second stage of the trial shall proceed at which the only issue shall be
30 the punishment to be assessed and declared. Evidence in aggravation and mitigation of punishment,

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1 including but not limited to evidence supporting any of the aggravating or mitigating circumstances listed in
2 subsection 2 or 3 of section 565.032, may be presented subject to the rules of evidence at criminal trials.
3 Such evidence may include, within the discretion of the court, evidence concerning the murder victim and the
4 impact of the offense upon the family of the victim and others. Rebuttal and surrebuttal evidence may be
5 presented. The state shall be the first to proceed. If the trier is a jury it shall be instructed on the law. The
6 attorneys may then argue the issue of punishment to the jury, and the state shall have the right to open and
7 close the argument. The trier shall assess and declare the punishment at life imprisonment without eligibility
8 for probation, parole, or release except by act of the governor:

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

10 or

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

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

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

18
19 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set out in writing
20 the aggravating circumstance or circumstances listed in subsection 2 of section 565.032 which it found
21 beyond a reasonable doubt. If the trier is a jury it shall be instructed before the case is submitted that if it is
22 unable to decide or agree upon the punishment the court shall assess and declare the punishment at life
23 imprisonment without eligibility for probation, parole, or release except by act of the governor [~~or death~~].
24 The court shall follow the same procedure as set out in this section whenever it is required to determine
25 punishment for murder in the first degree.

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

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

35 7. The provisions of this section shall only govern offenses committed on or after August 28, 2001.";
36 and

37 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.