

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1995**  
**98TH GENERAL ASSEMBLY**

5212H.03C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 565.020, 565.030, 565.032, and 565.040, RSMo, section 556.061 as enacted by house bill no. 1371, ninety-seventh general assembly, second regular session, and section 556.061 as enacted by house bill no. 215 merged with house bill no. 505, ninety-seventh general assembly, first regular session, section 558.046 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 558.046 as enacted by senate bill no. 167, eighty-seventh general assembly, first regular session, and to enact in lieu thereof nine new sections relating to first degree murder, with penalty provisions, an emergency clause for certain sections and an effective date for certain sections.

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

Section A. Sections 565.020, 565.030, 565.032, and 565.040, RSMo, section 556.061  
2 as enacted by house bill no. 1371, ninety-seventh general assembly, second regular session, and  
3 section 556.061 as enacted by house bill no. 215 merged with house bill no. 505, ninety-seventh  
4 general assembly, first regular session, section 558.046 as enacted by senate bill no. 491, ninety-  
5 seventh general assembly, second regular session, and section 558.046 as enacted by senate bill  
6 no. 167, eighty-seventh general assembly, first regular session, are repealed and nine new  
7 sections enacted in lieu thereof, to be known as sections 217.736, 556.061, 558.046, 558.047,  
8 565.020, 565.030, 565.032, 565.033, and 565.040, to read as follows:

**217.736. 1. For purposes of this section, a "youth offender parole hearing" is a  
2 hearing by the board of probation and parole for the purpose of reviewing the parole  
3 suitability of any prisoner convicted of an offense or offenses that were committed while  
4 the prisoner was under eighteen years of age.**

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.

5           **2. A person who was convicted of an offense or offenses that were committed while**  
6 **the person was under eighteen years of age and was sentenced to a cumulative term**  
7 **totaling more than forty years shall be eligible for release on parole by the board during**  
8 **his or her thirtieth year of incarceration, unless previously released or entitled to an earlier**  
9 **parole consideration hearing under other statutory provisions.**

10           **3. The youth offender parole hearing to consider release shall provide for a**  
11 **meaningful opportunity to obtain release. In addition to the guidelines considered at all**  
12 **parole hearings, the board, in reviewing a prisoner's suitability for parole at a youth**  
13 **offender parole hearing, shall give great weight to the following specific factors unique to**  
14 **youth:**

15           **(1) The subsequent growth and increased maturity of the prisoner during**  
16 **incarceration;**

17           **(2) Efforts made toward rehabilitation during incarceration, including**  
18 **participation in education programs or other programming during incarceration;**

19           **(3) Evidence of acceptance of accountability for crime;**

20           **(4) Past experiences of trauma or abuse;**

21           **(5) The nature and circumstances of the offense committed by the defendant;**

22           **(6) The degree of the defendant's culpability in light of his or her age and role in**  
23 **the offense, including intellectual capacity, and mental and emotional health;**

24           **(7) The defendant's background, including his or her family, home, and community**  
25 **environment;**

26           **(8) The effect of immaturity, impetuosity, or failure to appreciate risks and**  
27 **consequences on the defendant's participation in the offense;**

28           **(9) The extent of the defendant's participation in the offense;**

29           **(10) The effect of familial pressure or peer pressure on the defendant's actions; and**

30           **(11) Whether the juvenile offender remains the same risk to society as he or she did**  
31 **at the time of the initial sentencing.**

32           **4. Family members, friends, school personnel, faith leaders, and representatives**  
33 **from community-based organizations with knowledge about the individual before the**  
34 **crime or his or her growth and maturity since the time of the crime may submit statements**  
35 **for review by the board.**

36           **5. Nothing in this section is intended to alter the rights of victims at parole hearings.**  
37 **The victim or the victim's family shall be notified by the board of any parole hearings. The**  
38 **victim or the victim's family may be heard in person at the hearing via telephone or by**  
39 **electronic means. If the victim or victim's family member chooses not to participate in the**

40 **hearing, the board may consider previous statements made by the victim, victim's family**  
41 **during trial, the initial sentencing phase, or another board hearing.**

556.061. In this code, unless the context requires a different definition, the following  
2 terms shall mean:

3 (1) "Access", to instruct, communicate with, store data in, retrieve or extract data from,  
4 or otherwise make any use of any resources of, a computer, computer system, or computer  
5 network;

6 (2) "Affirmative defense":

7 (a) The defense referred to is not submitted to the trier of fact unless supported by  
8 evidence; and

9 (b) If the defense is submitted to the trier of fact the defendant has the burden of  
10 persuasion that the defense is more probably true than not;

11 (3) "Burden of injecting the issue":

12 (a) The issue referred to is not submitted to the trier of fact unless supported by evidence;  
13 and

14 (b) If the issue is submitted to the trier of fact any reasonable doubt on the issue requires  
15 a finding for the defendant on that issue;

16 (4) "Commercial film and photographic print processor", any person who develops  
17 exposed photographic film into negatives, slides or prints, or who makes prints from negatives  
18 or slides, for compensation. The term commercial film and photographic print processor shall  
19 include all employees of such persons but shall not include a person who develops film or makes  
20 prints for a public agency;

21 (5) "Computer", the box that houses the central processing unit (CPU), along with any  
22 internal storage devices, such as internal hard drives, and internal communication devices, such  
23 as internal modems capable of sending or receiving electronic mail or fax cards, along with any  
24 other hardware stored or housed internally. Thus, computer refers to hardware, software and data  
25 contained in the main unit. Printers, external modems attached by cable to the main unit,  
26 monitors, and other external attachments will be referred to collectively as peripherals and  
27 discussed individually when appropriate. When the computer and all peripherals are referred to  
28 as a package, the term "computer system" is used. Information refers to all the information on  
29 a computer system including both software applications and data;

30 (6) "Computer equipment", computers, terminals, data storage devices, and all other  
31 computer hardware associated with a computer system or network;

32 (7) "Computer hardware", all equipment which can collect, analyze, create, display,  
33 convert, store, conceal or transmit electronic, magnetic, optical or similar computer impulses or  
34 data. Hardware includes, but is not limited to, any data processing devices, such as central

35 processing units, memory typewriters and self-contained laptop or notebook computers; internal  
36 and peripheral storage devices, transistor-like binary devices and other memory storage devices,  
37 such as floppy disks, removable disks, compact disks, digital video disks, magnetic tape, hard  
38 drive, optical disks and digital memory; local area networks, such as two or more computers  
39 connected together to a central computer server via cable or modem; peripheral input or output  
40 devices, such as keyboards, printers, scanners, plotters, video display monitors and optical  
41 readers; and related communication devices, such as modems, cables and connections, recording  
42 equipment, RAM or ROM units, acoustic couplers, automatic dialers, speed dialers,  
43 programmable telephone dialing or signaling devices and electronic tone-generating devices; as  
44 well as any devices, mechanisms or parts that can be used to restrict access to computer  
45 hardware, such as physical keys and locks;

46 (8) "Computer network", two or more interconnected computers or computer systems;

47 (9) "Computer program", a set of instructions, statements, or related data that directs or  
48 is intended to direct a computer to perform certain functions;

49 (10) "Computer software", digital information which can be interpreted by a computer  
50 and any of its related components to direct the way they work. Software is stored in electronic,  
51 magnetic, optical or other digital form. The term commonly includes programs to run operating  
52 systems and applications, such as word processing, graphic, or spreadsheet programs, utilities,  
53 compilers, interpreters and communications programs;

54 (11) "Computer-related documentation", written, recorded, printed or electronically  
55 stored material which explains or illustrates how to configure or use computer hardware,  
56 software or other related items;

57 (12) "Computer system", a set of related, connected or unconnected, computer  
58 equipment, data, or software;

59 (13) "Confinement":

60 (a) A person is in confinement when such person is held in a place of confinement  
61 pursuant to arrest or order of a court, and remains in confinement until:

62 a. A court orders the person's release; or

63 b. The person is released on bail, bond, or recognizance, personal or otherwise; or

64 c. A public servant having the legal power and duty to confine the person authorizes his  
65 release without guard and without condition that he return to confinement;

66 (b) A person is not in confinement if:

67 a. The person is on probation or parole, temporary or otherwise; or

68 b. The person is under sentence to serve a term of confinement which is not continuous,  
69 or is serving a sentence under a work-release program, and in either such case is not being held

70 in a place of confinement or is not being held under guard by a person having the legal power  
71 and duty to transport the person to or from a place of confinement;

72 (14) "Consent": consent or lack of consent may be expressed or implied. Assent does  
73 not constitute consent if:

74 (a) It is given by a person who lacks the mental capacity to authorize the conduct charged  
75 to constitute the offense and such mental incapacity is manifest or known to the actor; or

76 (b) It is given by a person who by reason of youth, mental disease or defect, intoxication,  
77 a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable  
78 to make a reasonable judgment as to the nature or harmfulness of the conduct charged to  
79 constitute the offense; or

80 (c) It is induced by force, duress or deception;

81 (15) "Controlled substance", a drug, substance, or immediate precursor in schedules I  
82 through V as defined in chapter 195;

83 (16) "Criminal negligence", failure to be aware of a substantial and unjustifiable risk that  
84 circumstances exist or a result will follow, and such failure constitutes a gross deviation from  
85 the standard of care which a reasonable person would exercise in the situation;

86 (17) "Custody", a person is in custody when he or she has been arrested but has not been  
87 delivered to a place of confinement;

88 (18) "Damage", when used in relation to a computer system or network, means any  
89 alteration, deletion, or destruction of any part of the computer system or network;

90 (19) "Dangerous felony", the felonies of **murder in the first degree**, arson in the first  
91 degree, assault in the first degree, attempted rape in the first degree if physical injury results,  
92 attempted forcible rape if physical injury results, attempted sodomy in the first degree if physical  
93 injury results, attempted forcible sodomy if physical injury results, rape in the first degree,  
94 forcible rape, sodomy in the first degree, forcible sodomy, assault in the second degree if the  
95 victim of such assault is a special victim as defined in subdivision (14) of section 565.002,  
96 kidnapping in the first degree, kidnapping, murder in the second degree, assault of a law  
97 enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first  
98 degree, robbery in the first degree, statutory rape in the first degree when the victim is a child  
99 less than twelve years of age at the time of the commission of the act giving rise to the offense,  
100 statutory sodomy in the first degree when the victim is a child less than twelve years of age at  
101 the time of the commission of the act giving rise to the offense, child molestation in the first or  
102 second degree, abuse of a child if the child dies as a result of injuries sustained from conduct  
103 chargeable under section 568.060, child kidnapping, parental kidnapping committed by detaining  
104 or concealing the whereabouts of the child for not less than one hundred twenty days under  
105 section 565.153, and an "intoxication-related traffic offense" or "intoxication-related boating

106 offense" if the person is found to be a "habitual offender" or "habitual boating offender" as such  
107 terms are defined in section 577.001;

108 (20) "Dangerous instrument", any instrument, article or substance, which, under the  
109 circumstances in which it is used, is readily capable of causing death or other serious physical  
110 injury;

111 (21) "Data", a representation of information, facts, knowledge, concepts, or instructions  
112 prepared in a formalized or other manner and intended for use in a computer or computer  
113 network. Data may be in any form including, but not limited to, printouts, microfiche, magnetic  
114 storage media, punched cards and as may be stored in the memory of a computer;

115 (22) "Deadly weapon", any firearm, loaded or unloaded, or any weapon from which a  
116 shot, readily capable of producing death or serious physical injury, may be discharged, or a  
117 switchblade knife, dagger, billy club, blackjack or metal knuckles;

118 (23) "Digital camera", a camera that records images in a format which enables the  
119 images to be downloaded into a computer;

120 (24) "Disability", a mental, physical, or developmental impairment that substantially  
121 limits one or more major life activities or the ability to provide adequately for one's care or  
122 protection, whether the impairment is congenital or acquired by accident, injury or disease,  
123 where such impairment is verified by medical findings;

124 (25) "Elderly person", a person sixty years of age or older;

125 (26) "Felony", an offense so designated or an offense for which persons found guilty  
126 thereof may be sentenced to death or imprisonment for a term of more than one year;

127 (27) "Forcible compulsion" either:

128 (a) Physical force that overcomes reasonable resistance; or

129 (b) A threat, express or implied, that places a person in reasonable fear of death, serious  
130 physical injury or kidnapping of such person or another person;

131 (28) "Incapacitated", a temporary or permanent physical or mental condition in which  
132 a person is unconscious, unable to appraise the nature of his or her conduct, or unable to  
133 communicate unwillingness to an act;

134 (29) "Infraction", a violation defined by this code or by any other statute of this state if  
135 it is so designated or if no sentence other than a fine, or fine and forfeiture or other civil penalty,  
136 is authorized upon conviction;

137 (30) "Inhabitable structure", a vehicle, vessel or structure:

138 (a) Where any person lives or carries on business or other calling; or

139 (b) Where people assemble for purposes of business, government, education, religion,  
140 entertainment, or public transportation; or

141 (c) Which is used for overnight accommodation of persons.

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143 Any such vehicle, vessel, or structure is inhabitable regardless of whether a person is actually  
144 present. If a building or structure is divided into separately occupied units, any unit not occupied  
145 by the actor is an inhabitable structure of another;

146 (31) "Knowingly", when used with respect to:

147 (a) Conduct or attendant circumstances, means a person is aware of the nature of his or  
148 her conduct or that those circumstances exist; or

149 (b) A result of conduct, means a person is aware that his or her conduct is practically  
150 certain to cause that result;

151 (32) "Law enforcement officer", any public servant having both the power and duty to  
152 make arrests for violations of the laws of this state, and federal law enforcement officers  
153 authorized to carry firearms and to make arrests for violations of the laws of the United States;

154 (33) "Misdemeanor", an offense so designated or an offense for which persons found  
155 guilty thereof may be sentenced to imprisonment for a term of which the maximum is one year  
156 or less;

157 (34) "Of another", property that any entity, including but not limited to any natural  
158 person, corporation, limited liability company, partnership, association, governmental  
159 subdivision or instrumentality, other than the actor, has a possessory or proprietary interest  
160 therein, except that property shall not be deemed property of another who has only a security  
161 interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or  
162 other security arrangement;

163 (35) "Offense", any felony or misdemeanor;

164 (36) "Physical injury", slight impairment of any function of the body or temporary loss  
165 of use of any part of the body;

166 (37) "Place of confinement", any building or facility and the grounds thereof wherein a  
167 court is legally authorized to order that a person charged with or convicted of a crime be held;

168 (38) "Possess" or "possessed", having actual or constructive possession of an object with  
169 knowledge of its presence. A person has actual possession if such person has the object on his  
170 or her person or within easy reach and convenient control. A person has constructive possession  
171 if such person has the power and the intention at a given time to exercise dominion or control  
172 over the object either directly or through another person or persons. Possession may also be sole  
173 or joint. If one person alone has possession of an object, possession is sole. If two or more  
174 persons share possession of an object, possession is joint;

175 (39) "Property", anything of value, whether real or personal, tangible or intangible, in  
176 possession or in action;

177 (40) "Public servant", any person employed in any way by a government of this state who  
178 is compensated by the government by reason of such person's employment, any person appointed  
179 to a position with any government of this state, or any person elected to a position with any  
180 government of this state. It includes, but is not limited to, legislators, jurors, members of the  
181 judiciary and law enforcement officers. It does not include witnesses;

182 (41) "Purposely", when used with respect to a person's conduct or to a result thereof,  
183 means when it is his or her conscious object to engage in that conduct or to cause that result;

184 (42) "Recklessly", consciously disregarding a substantial and unjustifiable risk that  
185 circumstances exist or that a result will follow, and such disregard constitutes a gross deviation  
186 from the standard of care which a reasonable person would exercise in the situation;

187 (43) "Serious emotional injury", an injury that creates a substantial risk of temporary or  
188 permanent medical or psychological damage, manifested by impairment of a behavioral,  
189 cognitive or physical condition. Serious emotional injury shall be established by testimony of  
190 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of  
191 medical or psychological certainty;

192 (44) "Serious physical injury", physical injury that creates a substantial risk of death or  
193 that causes serious disfigurement or protracted loss or impairment of the function of any part of  
194 the body;

195 (45) "Services", when used in relation to a computer system or network, means use of  
196 a computer, computer system, or computer network and includes, but is not limited to, computer  
197 time, data processing, and storage or retrieval functions;

198 (46) "Sexual orientation", male or female heterosexuality, homosexuality or bisexuality  
199 by inclination, practice, identity or expression, or having a self-image or identity not traditionally  
200 associated with one's gender;

201 (47) "Vehicle", a self-propelled mechanical device designed to carry a person or persons,  
202 excluding vessels or aircraft;

203 (48) "Vessel", any boat or craft propelled by a motor or by machinery, whether or not  
204 such motor or machinery is a principal source of propulsion used or capable of being used as a  
205 means of transportation on water, or any boat or craft more than twelve feet in length which is  
206 powered by sail alone or by a combination of sail and machinery, and used or capable of being  
207 used as a means of transportation on water, but not any boat or craft having, as the only means  
208 of propulsion, a paddle or oars;

209 (49) "Voluntary act":

210 (a) A bodily movement performed while conscious as a result of effort or determination.

211 Possession is a voluntary act if the possessor knowingly procures or receives the thing possessed,



212 or having acquired control of it was aware of his or her control for a sufficient time to have  
213 enabled him or her to dispose of it or terminate his or her control; or

214 (b) An omission to perform an act of which the actor is physically capable. A person is  
215 not guilty of an offense based solely upon an omission to perform an act unless the law defining  
216 the offense expressly so provides, or a duty to perform the omitted act is otherwise imposed by  
217 law;

218 (50) "Vulnerable person", any person in the custody, care, or control of the department  
219 of mental health who is receiving services from an operated, funded, licensed, or certified  
220 program.

556.061. In this code, unless the context requires a different definition, the following  
2 shall apply:

3 (1) "Affirmative defense" has the meaning specified in section 556.056;

4 (2) "Burden of injecting the issue" has the meaning specified in section 556.051;

5 (3) "Commercial film and photographic print processor", any person who develops  
6 exposed photographic film into negatives, slides or prints, or who makes prints from negatives  
7 or slides, for compensation. The term commercial film and photographic print processor shall  
8 include all employees of such persons but shall not include a person who develops film or makes  
9 prints for a public agency;

10 (4) "Confinement":

11 (a) A person is in confinement when such person is held in a place of confinement  
12 pursuant to arrest or order of a court, and remains in confinement until:

13 a. A court orders the person's release; or

14 b. The person is released on bail, bond, or recognizance, personal or otherwise; or

15 c. A public servant having the legal power and duty to confine the person authorizes his  
16 release without guard and without condition that he return to confinement;

17 (b) A person is not in confinement if:

18 a. The person is on probation or parole, temporary or otherwise; or

19 b. The person is under sentence to serve a term of confinement which is not continuous,  
20 or is serving a sentence under a work-release program, and in either such case is not being held  
21 in a place of confinement or is not being held under guard by a person having the legal power  
22 and duty to transport the person to or from a place of confinement;

23 (5) "Consent": consent or lack of consent may be expressed or implied. Assent does not  
24 constitute consent if:

25 (a) It is given by a person who lacks the mental capacity to authorize the conduct charged  
26 to constitute the offense and such mental incapacity is manifest or known to the actor; or

27 (b) It is given by a person who by reason of youth, mental disease or defect, intoxication,  
28 a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable  
29 to make a reasonable judgment as to the nature or harmfulness of the conduct charged to  
30 constitute the offense; or

31 (c) It is induced by force, duress or deception;

32 (6) "Criminal negligence" has the meaning specified in section 562.016;

33 (7) "Custody", a person is in custody when the person has been arrested but has not been  
34 delivered to a place of confinement;

35 (8) "Dangerous felony" means the felonies of **murder in the first degree**, arson in the  
36 first degree, assault in the first degree, attempted rape in the first degree if physical injury results,  
37 attempted forcible rape if physical injury results, attempted sodomy in the first degree if physical  
38 injury results, attempted forcible sodomy if physical injury results, rape in the first degree,  
39 forcible rape, sodomy in the first degree, forcible sodomy, kidnapping, murder in the second  
40 degree, assault of a law enforcement officer in the first degree, domestic assault in the first  
41 degree, elder abuse in the first degree, robbery in the first degree, statutory rape in the first degree  
42 when the victim is a child less than twelve years of age at the time of the commission of the act  
43 giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than  
44 twelve years of age at the time of the commission of the act giving rise to the offense, and, abuse  
45 of a child if the child dies as a result of injuries sustained from conduct chargeable under section  
46 568.060, child kidnapping, and parental kidnapping committed by detaining or concealing the  
47 whereabouts of the child for not less than one hundred twenty days under section 565.153;

48 (9) "Dangerous instrument" means any instrument, article or substance, which, under the  
49 circumstances in which it is used, is readily capable of causing death or other serious physical  
50 injury;

51 (10) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from  
52 which a shot, readily capable of producing death or serious physical injury, may be discharged,  
53 or a switchblade knife, dagger, billy **club**, blackjack or metal knuckles;

54 (11) "Felony" has the meaning specified in section 556.016;

55 (12) "Forcible compulsion" means either:

56 (a) Physical force that overcomes reasonable resistance; or

57 (b) A threat, express or implied, that places a person in reasonable fear of death, serious  
58 physical injury or kidnapping of such person or another person;

59 (13) "Incapacitated" means that physical or mental condition, temporary or permanent,  
60 in which a person is unconscious, unable to appraise the nature of such person's conduct, or  
61 unable to communicate unwillingness to an act;

62 (14) "Infraction" has the meaning specified in section 556.021;

- 63 (15) "Inhabitable structure" has the meaning specified in section 569.010;
- 64 (16) "Knowingly" has the meaning specified in section 562.016;
- 65 (17) "Law enforcement officer" means any public servant having both the power and  
66 duty to make arrests for violations of the laws of this state, and federal law enforcement officers  
67 authorized to carry firearms and to make arrests for violations of the laws of the United States;
- 68 (18) "Misdemeanor" has the meaning specified in section 556.016;
- 69 (19) "Offense" means any felony, misdemeanor or infraction;
- 70 (20) "Physical injury" means physical pain, illness, or any impairment of physical  
71 condition;
- 72 (21) "Place of confinement" means any building or facility and the grounds thereof  
73 wherein a court is legally authorized to order that a person charged with or convicted of a crime  
74 be held;
- 75 (22) "Possess" or "possessed" means having actual or constructive possession of an  
76 object with knowledge of its presence. A person has actual possession if such person has the  
77 object on his or her person or within easy reach and convenient control. A person has  
78 constructive possession if such person has the power and the intention at a given time to exercise  
79 dominion or control over the object either directly or through another person or persons.  
80 Possession may also be sole or joint. If one person alone has possession of an object, possession  
81 is sole. If two or more persons share possession of an object, possession is joint;
- 82 (23) "Public servant" means any person employed in any way by a government of this  
83 state who is compensated by the government by reason of such person's employment, any person  
84 appointed to a position with any government of this state, or any person elected to a position with  
85 any government of this state. It includes, but is not limited to, legislators, jurors, members of the  
86 judiciary and law enforcement officers. It does not include witnesses;
- 87 (24) "Purposely" has the meaning specified in section 562.016;
- 88 (25) "Recklessly" has the meaning specified in section 562.016;
- 89 (26) "Ritual" or "ceremony" means an act or series of acts performed by two or more  
90 persons as part of an established or prescribed pattern of activity;
- 91 (27) "Serious emotional injury", an injury that creates a substantial risk of temporary or  
92 permanent medical or psychological damage, manifested by impairment of a behavioral,  
93 cognitive or physical condition. Serious emotional injury shall be established by testimony of  
94 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of  
95 medical or psychological certainty;
- 96 (28) "Serious physical injury" means physical injury that creates a substantial risk of  
97 death or that causes serious disfigurement or protracted loss or impairment of the function of any  
98 part of the body;

99 (29) "Sexual conduct" means acts of human masturbation; deviate sexual intercourse;  
 100 sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area,  
 101 buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification;

102 (30) "Sexual contact" means any touching of the genitals or anus of any person, or the  
 103 breast of any female person, or any such touching through the clothing, for the purpose of  
 104 arousing or gratifying sexual desire of any person;

105 (31) "Sexual performance", any performance, or part thereof, which includes sexual  
 106 conduct by a child who is less than seventeen years of age;

107 (32) "Voluntary act" has the meaning specified in section 562.011.

558.046. The sentencing court may, upon petition, reduce any term of sentence or  
 2 probation pronounced by the court or a term of conditional release or parole pronounced by the  
 3 state board of probation and parole if the court determines that:

4 (1) The convicted person was:

5 (a) Convicted of an offense that did not involve violence or the threat of violence; and

6 (b) Convicted of an offense that involved alcohol or illegal drugs; and

7 (c) **Convicted of an offense that did not result in the death of one or more persons;**

8 **and**

9 (2) Since the commission of such offense, the convicted person has successfully  
 10 completed a detoxification and rehabilitation program; and

11 (3) The convicted person is not:

12 (a) A prior offender, a persistent offender, a dangerous offender or a persistent  
 13 misdemeanor offender as defined by section 558.016; or

14 (b) A persistent sexual offender as defined in section 566.125; or

15 (c) A prior offender[, a] **or** persistent offender [or a class X offender] as defined in  
 16 section 558.019, **or a class X offender as that term was previously defined under section**  
 17 **558.019.**

558.046. The sentencing court may, upon petition, reduce any term of sentence or  
 2 probation pronounced by the court or a term of conditional release or parole pronounced by the  
 3 state board of probation and parole if the court determines that:

4 (1) The convicted person was:

5 (a) Convicted of a crime that did not involve violence or the threat of violence; and

6 (b) Convicted of a crime that involved alcohol or illegal drugs; and

7 (c) **Convicted of a crime that did not result in the death of one or more persons; and**

8 (2) Since the commission of such crime, the convicted person has successfully  
 9 completed a detoxification and rehabilitation program; and

10 (3) The convicted person is not:

11 (a) A prior offender, a persistent offender, a dangerous offender or a persistent  
12 misdemeanor offender as defined by section 558.016; or

13 (b) A persistent sexual offender as defined in section 558.018; or

14 (c) A prior offender[, a] **or** persistent offender [or a class X offender] as defined in  
15 section 558.019, **or a class X offender as that term was previously defined under section**  
16 **558.019.**

**558.047. 1. Any person sentenced to a term of imprisonment for life without**  
2 **eligibility for parole before August 28, 2016, who was under eighteen years of age at the**  
3 **time of the commission of the offense or offenses may submit to the sentencing court of**  
4 **original jurisdiction a petition for a review of his or her sentence, regardless of whether the**  
5 **case is final for purposes of appeal.**

6 **2. A copy of the petition shall be served on the office of the prosecutor in the**  
7 **judicial circuit of original jurisdiction. The petition shall include the person's**  
8 **statement that he or she was under eighteen years of age at the time of the offense, was**  
9 **sentenced to a term of imprisonment for life without eligibility for parole, and requests to**  
10 **be resentenced in accordance with section 565.033 in the same manner as if the person had**  
11 **not previously been sentenced.**

12 **3. If any of the information required in subsection 2 of this section is missing from**  
13 **the petition, or if proof of service on the prosecuting or circuit attorney is not provided, the**  
14 **court shall return the petition to the person and advise him or her that the matter**  
15 **cannot be considered without the missing information.**

16 **4. A reply to the petition, if any, shall be filed with the court within thirty days of**  
17 **the date on which the prosecuting or circuit attorney was served with the petition, unless**  
18 **a continuance is granted for good cause.**

19 **5. The court shall hold a hearing and resentence the defendant under section**  
20 **565.033. Either the defense or prosecution may move for the resentencing hearing to take**  
21 **place in front of a jury instead of the judge. At such a resentencing hearing, the victim or**  
22 **victim's family members shall retain their rights under section 557.041.**

**565.020. 1. A person commits the [crime] offense of murder in the first degree if he or**  
2 **she 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 of**  
6 **the governor; except that, if a person has not reached his [sixteenth] or her eighteenth birthday**  
7 **at the time of the commission of the [crime] offense, the punishment shall be [imprisonment for**

8 life without eligibility for probation or parole, or release except by act of the governor] **as**  
9 **provided under section 565.033.**

2 565.030. 1. Where murder in the first degree is charged but not submitted or where the  
3 state waives the death penalty, the submission to the trier and all subsequent proceedings in the  
4 case shall proceed as in all other criminal cases [with a single stage trial in which guilt and  
5 punishment are submitted together].

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

14 3. If murder in the first degree is submitted and the death penalty was not waived but the  
15 trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed [at  
16 which the only issue shall be the punishment to be assessed and declared. No further evidence  
17 shall be received. If the trier is a jury it shall be instructed on the law] **as in all other criminal**  
18 **cases.** The attorneys may then argue as in other criminal cases the issue of punishment, after  
19 which the trier shall assess and declare the punishment as in all other criminal cases.

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

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

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

36 (3) If the trier concludes that there is evidence in mitigation of punishment, including  
37 but not limited to evidence supporting the statutory mitigating circumstances listed in subsection  
38 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment  
39 found by the trier; or

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

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

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

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

60 7. The provisions of this section shall only govern offenses committed on or after August  
61 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 [he] 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 of  
8 life imprisonment without eligibility for probation, parole, or release except by act of the

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

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

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

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

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

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

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

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

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

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

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

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



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

49 (12) The murdered individual was a witness or potential witness in any past or pending  
50 investigation or past or pending prosecution, and was killed as a result of his **or her** status as a  
51 witness or potential witness;

52 (13) The murdered individual was an employee of an institution or facility of the  
53 department of corrections of this state or local correction agency and was killed in the course of  
54 performing his **or her** official duties, or the murdered individual was an inmate of such  
55 institution or facility;

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

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

60 (16) The murder was committed for the purpose of causing or attempting to cause a  
61 person to refrain from initiating or aiding in the prosecution of a felony offense defined in  
62 chapter [195] 579;

63 (17) The murder was committed during the commission of [a crime] **an offense** which  
64 is part of a pattern of criminal street gang activity as defined in section 578.421.

65 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

76 (7) The age of the defendant at the time of the [crime] **offense**.

**565.033. 1. A person found guilty of murder in the first degree who was under the  
2 age of eighteen at the time of the commission of the offense shall be sentenced to a term of  
3 not less than twenty-five years and not to exceed forty years, or life imprisonment with  
4 parole.**

5           **2. When assessing punishment in all cases in which the defendant was under the age**  
6 **of eighteen at the time of the commission of the offense or offenses, the judge in a jury-**  
7 **waived trial shall consider, or the judge shall include in instructions to the jury for it to**  
8 **consider, the following factors:**

- 9           **(1) The nature and circumstances of the offense committed by the defendant;**  
10          **(2) The degree of the defendant's culpability in light of his or her age and role in the**  
11 **offense;**  
12          **(3) The defendant's age, maturity, intellectual capacity, and mental and emotional**  
13 **health at the time of the offense;**  
14          **(4) The defendant's background, including his or her family, home, and community**  
15 **environment;**  
16          **(5) The effect of immaturity, impetuosity, or failure to appreciate risks and**  
17 **consequences on the defendant's participation in the offense;**  
18          **(6) The extent of the defendant's participation in the offense;**  
19          **(7) The effect of familial pressure or peer pressure on the defendant's actions;**  
20          **(8) The nature and extent of the defendant's prior criminal history;**  
21          **(9) The effect of characteristics attributable to the defendant's youth on the**  
22 **defendant's judgment;**  
23          **(10) A statement by the victim or the victim's family member as provided by section**  
24 **557.041; and**  
25          **(11) Other relevant factors not inconsistent with Miller v. Alabama, 132 S.Ct. 2455,**  
26 **183 L. Ed. 2d 407, 2012 U.S. LEXIS 4873, 80 U.S.L.W. 4560, 78 A.L.R. Fed. 2d 547, 23 Fla.**  
27 **L. Weekly Fed. S 455, 2012 WL 2368659 (U.S. 2012).**

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 the  
3 court to life imprisonment without eligibility for probation, parole, or release except by act of  
4 the governor, with the exception that when a specific aggravating circumstance found in a case  
5 is held to be unconstitutional or invalid for another reason, the supreme court of Missouri is  
6 further authorized to remand the case for resentencing or retrial of the punishment pursuant to  
7 subsection 5 of section [565.036] **565.035**.

8           2. In the event that any death sentence imposed pursuant to this chapter is held to be  
9 unconstitutional, the trial court which previously sentenced the defendant to death shall cause  
10 the defendant to be brought before the court and shall sentence the defendant to life  
11 imprisonment without eligibility for probation, parole, or release except by act of the governor,  
12 with the exception that when a specific aggravating circumstance found in a case is held to be  
13 inapplicable, unconstitutional or invalid for another reason, the supreme court of Missouri is

14 further authorized to remand the case for retrial of the punishment pursuant to subsection 5 of  
15 section 565.035.

Section B. Because of the need to adopt a punishment scheme for first degree murderers  
2 of a certain age after the United States Supreme Court declared as unconstitutional the only  
3 punishment available under Missouri law for such offenders, the repeal and reenactment of  
4 section 565.020, the repeal and reenactment of the second occurrence of section 556.061, the  
5 repeal and reenactment of the second occurrence of section 558.046, and the enactment of  
6 section 565.033 of this act is deemed necessary for the immediate preservation of the public  
7 health, welfare, peace and safety, and is hereby declared to be an emergency act within the  
8 meaning of the constitution, and the repeal and reenactment of section 565.020, the repeal and  
9 reenactment of the second occurrence of section 556.061, the repeal and reenactment of the  
10 second occurrence of section 558.046, and the enactment of section 565.033 of this act shall be  
11 in full force and effect upon its passage and approval.

Section C. The repeal and reenactment of section 565.032 and the repeal and  
2 reenactment of the first occurrence of section 556.061 of this act shall become effective January  
3 1, 2017.

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