

FIRST REGULAR SESSION

HOUSE BILL NO. 278

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HANNEGAN.

0911H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 565.020 and 565.030, RSMo, and to enact in lieu thereof three new sections relating to murder in the first degree, with a penalty provision.

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

Section A. Sections 565.020 and 565.030, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 565.020, 565.028, and 565.030, to read as follows:

565.020. 1. A person commits the offense of murder in the first degree if he or she knowingly causes the death of another person after deliberation upon the matter.

2. The offense of murder in the first degree is a class A felony, and, if a person is eighteen years of age or older at the time of the offense, the punishment shall be either death or imprisonment for life without eligibility for probation or parole, or release except by act of the governor; **except that, a person who raises the matter of having suffered from a serious mental illness at the time of the commission of the offense and is found to have suffered from a serious mental illness at the time of the commission of the offense under section 565.028 shall be ineligible for a sentence of death due to a serious mental illness.** If a person has not reached his or her eighteenth birthday at the time of the commission of the offense, the punishment shall be as provided under section 565.033.

565.028. 1. (1) Subject to subdivision (2) of this subsection, a defendant has a serious mental illness if the following apply:

(a) The defendant has been diagnosed as described in paragraph (b) of this subdivision with one or more of the following conditions:

a. Schizophrenia;

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.

- 6 **b. Schizoaffective disorder;**
- 7 **c. Bipolar disorder, with psychotic features;**
- 8 **d. Major depressive disorder, with psychotic features;**
- 9 **e. Delusional disorders;**
- 10 **f. Traumatic brain injury; or**
- 11 **g. Posttraumatic stress disorder (PTSD); and**

12 **(b) At the time of the commission of the offense, the condition or conditions**
13 **described in paragraph (a) of this subdivision with which the defendant has been**
14 **diagnosed, while not meeting the standard to be found not guilty by reason of mental**
15 **disease or defect under section 552.030, the standard to be found incompetent to stand trial**
16 **as described in section 552.020, or the standard for mental disease or defect under**
17 **subdivision (8) of subsection 2 of section 552.015, nevertheless significantly impaired the**
18 **defendant's capacity to do one or more of the following:**

- 19 **a. Exercise rational judgment in relation to the defendant's conduct;**
- 20 **b. Conform the defendant's conduct to the requirements of law; or**
- 21 **c. Appreciate the nature, consequences, or wrongfulness of the defendant's conduct.**

22 **(2) A disorder manifested primarily by repeated criminal conduct or attributable**
23 **solely to the acute effects of voluntary use of alcohol or any other drug of abuse does not,**
24 **solely alone, constitute a serious mental illness for purposes of this section.**

25 **(3) Evidence to show the existence of a serious mental illness may include, but is not**
26 **limited to, the following:**

- 27 **(a) Existence of active psychosis;**
- 28 **(b) Delusions;**
- 29 **(c) Hallucinations;**
- 30 **(d) Disorganized or irrational thinking;**
- 31 **(e) Erroneous perceptions of reality;**
- 32 **(f) Mania;**
- 33 **(g) Significant disruptions of consciousness and memory;**
- 34 **(h) Grossly disorganized or abnormal motor behavior, including catatonia; or**
- 35 **(i) Any other evidence relevant to show the conditions described under paragraphs**
36 **(a) and (b) of subdivision (1) of this section.**

37 **2. The diagnosis of a defendant with a condition or conditions described in**
38 **paragraph (a) of subdivision (1) of subsection 1 of this section may be made at any time**
39 **prior to, on, or after the date of the commission of the offense or the day on which the**
40 **defendant raises the matter of having suffered from a serious mental illness at the time of**
41 **the commission of the offense under subsection 3 of this section. Diagnosis of the condition**

42 or conditions after the date of the commission of the offense does not preclude the
43 defendant from presenting evidence that the defendant had a serious mental illness at the
44 time of the commission of the offense or, in the circumstances described in subsection 3, 4,
45 5, or 6 of this section, from having the benefit of the rebuttable presumption described in
46 such subsections.

47 3. A defendant charged with murder in the first degree may raise the issue of a
48 serious mental illness at the time of the commission of the offense to exempt himself or
49 herself from eligibility for a sentence of death.

50 4. (1) If the defense raises the matter of the defendant's serious mental illness at
51 the time of the commission of the offense, the court shall, at the request of the state or the
52 defense, order an evaluation of the defendant in accordance with the provisions of this
53 section.

54 (2) The state shall not use any evidence against the defendant acquired as a result
55 of any evaluation ordered under this section or call any examiner who performed such an
56 evaluation on the defendant as a witness against the defendant unless and until the defense
57 presents such evidence at a hearing on the matter of the defendant's serious mental illness
58 at the time of the commission of the offense. The state may then call the examiner and use
59 the information the examiner obtained at the hearing on this issue.

60 (3) Neither the appointment nor the testimony of an examiner in an evaluation
61 ordered under this section shall preclude the prosecution or defense from calling other
62 witnesses or presenting other evidence on the issue of the defendant's serious mental illness.

63 (4) No statement that a defendant makes in an evaluation ordered under this
64 section or in a pretrial hearing or proceeding under this section relating to the defendant's
65 serious mental illness at the time of the commission of the offense shall be used against the
66 defendant on the issue of guilt in any criminal action or proceeding.

67 5. If a defendant raises the matter of having suffered from a serious mental illness
68 at the time of the commission of the offense and submits prima facie evidence that he or she
69 has a serious mental illness as described in paragraph (a) of subdivision (1) of subsection
70 1 of this section and that the condition existed at the time of the commission of the offense,
71 the prosecution shall have an opportunity to present evidence to contest the serious mental
72 illness or to rebut the presumption that the condition, if present, significantly impaired the
73 defendant's capacity at the time of the commission of the offense in a manner described in
74 subparagraph a., b., or c. of paragraph (b) of subdivision (1) of subsection 1 of this section.
75 The prosecution shall have the burden of proving, beyond a reasonable doubt, that the
76 serious mental illness did not exist at the time of the commission of the offense or, if
77 present, to establish beyond a reasonable doubt that the serious mental illness did not

78 significantly impair the defendant's capacity at the time of the commission of the offense
79 in a manner described in subparagraph a., b., or c. of paragraph (b) of subdivision (1) of
80 subsection 1 of this section.

81 6. (1) If a defendant raises the matter of having suffered from a serious mental
82 illness at the time of the commission of the offense, and the state contests the application
83 of the exemption based on the information the defense provides, the defense shall be
84 entitled to a pretrial hearing and determination on eligibility for the exemption.

85 (2) If the defense raises the matter, the defense shall be entitled to a hearing on the
86 issues that would exempt the defendant from eligibility for a sentence of death under this
87 section. The determination of eligibility for the exemption shall be made pretrial by the
88 court.

89 (3) At such a hearing, the defense shall produce evidence, from any source, to
90 establish a prima facie case that the defendant suffered from a serious mental illness, as
91 described in paragraph (a) of subdivision (1) of subsection 1 of this section. If the defense
92 submits prima facie evidence that the defendant had a serious mental illness at the time of
93 the commission of the offense, it shall be rebuttably presumed that the condition
94 significantly impaired the defendant's capacity at the time of the commission of the offense
95 in a manner described in subparagraph a., b., or c. of paragraph (b) of subdivision (1) of
96 subsection 1 of this section.

97 (4) The state may then present evidence to rebut the presumption and establish,
98 beyond a reasonable doubt, that the defendant did not suffer from a serious mental illness
99 at the time of the commission of the offense or that the serious mental illness, if present, did
100 not substantially impair the capacity of the defendant at the time of the commission of the
101 offense in a manner described in subparagraph a., b., or c. of paragraph (b) of subdivision
102 (1) of subsection 1 of this section.

103 (5) If the court finds that the state has failed to rebut the presumption; or the state
104 failed to present evidence to prove, beyond a reasonable doubt, that the defendant did not
105 have a serious mental illness; or the state failed to prove that the serious mental illness, if
106 present, did not substantially impair the defendant's capacity at the time of the commission
107 of the offense, the court shall find that the exemption applies and direct judgment on the
108 matter of the exemption in favor of the defendant.

109 (6) If the defense elects to have the court take up the issue of the defendant's serious
110 mental illness before the trial, and a determination is made that the exemption does not
111 apply, it shall not prejudice the defendant's right to have the issue submitted to the trier
112 of fact in the sentencing phase of the trial following a finding of guilt on the charge of
113 murder in the first degree in a case in which the death penalty was not waived.

114 **7. A defendant's pleading of not guilty due to mental disease or defect or incapacity**
115 **to stand trial, or a finding after such a plea that the defendant does not suffer from mental**
116 **disease or defect or has capacity to stand trial shall not preclude the defendant from**
117 **raising the matter of the defendant's serious mental illness at the time of the commission**
118 **of the offense under this section and, if a defendant so raises that matter, shall not limit or**
119 **affect any of the procedures described in this section or the authority of a court to make**
120 **any finding described in this section.**

 565.030. 1. Where murder in the first degree is charged but not submitted or where the
2 state waives the death penalty, the submission to the trier and all subsequent proceedings in the
3 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 death
5 penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier shall
6 decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of
7 punishment shall not be submitted to the trier at the first stage. If an offense is charged other
8 than murder in the first degree in a count together with a count of murder in the first degree, the
9 trial judge shall assess punishment on any such offense according to law, after the defendant is
10 found guilty of such offense and after he finds the defendant to be a prior offender pursuant to
11 chapter 558.

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

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

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

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

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

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

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

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

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

58 7. The provisions of this section shall only govern offenses committed on or after August
59 28, 2001.

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