

FIRST REGULAR SESSION

# SENATE BILL NO. 288

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time January 23, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1526S.011

## 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Section A. Section 565.030, RSMo, is repealed and one new section  
2 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  
2 submitted or where the state waives the death penalty, the submission to the  
3 trier and all subsequent proceedings in the case shall proceed as in all other  
4 criminal cases.

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

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

19 4. If the trier at the first stage of a trial where the death penalty was not

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

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

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

36 (2) If the trier 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;  
38 or

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

44 (4) If the trier decides under all of the circumstances not to assess and  
45 declare the punishment at death. If the trier is a jury it shall be so instructed.  
46 If the trier assesses and declares the punishment at death it shall, in its findings  
47 or verdict, set out in writing the aggravating circumstance or circumstances listed  
48 in subsection 2 of section 565.032 which it found beyond a reasonable doubt. If  
49 the trier is a jury it shall be instructed before the case is submitted that if it is  
50 unable to decide or agree upon the punishment the court shall assess and declare  
51 the punishment at life imprisonment without eligibility for probation, parole, or  
52 release except by act of the governor [or death]. The court shall follow the same  
53 procedure as set out in this section whenever it is required to determine  
54 punishment for murder in the first degree.

55 5. Upon written agreement of the parties and with leave of the court, the

56 issue of the defendant's intellectual disability may be taken up by the court and  
57 decided prior to trial without prejudicing the defendant's right to have the issue  
58 submitted to the trier of fact as provided in subsection 4 of this section.

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

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

✓

Bill

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