

FIRST REGULAR SESSION

SENATE BILL NO. 462

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ARTHUR.

Read 1st time February 27, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2297S.011

AN ACT

To repeal section 565.020, RSMo, and to enact in lieu thereof two 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Section A. Section 565.020, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 565.020 and 565.028, to read as
3 follows:

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

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

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

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

5 a. **Schizophrenia;**

- 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);**

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

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

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

29 **2. The diagnosis of a person with a condition or conditions**
30 **described in paragraph (a) of subdivision (1) of subsection 1 of this**
31 **section may be made at any time prior to, on, or after the day of the**
32 **commission of the offense or the day on which the person under**
33 **subsection 3 of this section raises the matter of the person's serious**
34 **mental illness at the time of the commission of the offense. Diagnosis**
35 **of the condition or conditions after the date of the commission of the**
36 **offense does not preclude the person from presenting evidence that the**
37 **person had a serious mental illness at the time of the commission of the**
38 **offense or, in the circumstances described in subsection 3, 4, 5, or 6 of**
39 **this section, from having the benefit of the rebuttable presumption**
40 **described in such subsections.**

41 **3. A person charged with murder in the first degree may raise**
42 **the issue of a serious mental illness at the time of the commission of the**

43 offense to exempt himself or herself from eligibility for a sentence of
44 death.

45 4. (1) If the defense raises the matter of the defendant's serious
46 mental illness at the time of the commission of the offense, the court
47 shall, at the request of the state or the defense, order an evaluation of
48 the accused in accordance with the provisions of this section.

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

57 (3) Neither the appointment nor the testimony of an examiner in
58 an evaluation ordered under this section precludes the prosecutor or
59 defense counsel from calling other witnesses or presenting other
60 evidence on the issue of the person's serious mental illness.

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

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

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

83 6. (1) If a person raises the matter of his or her serious mental
84 illness at the time of the commission of the offense, and the state
85 contests the application of the exemption based on the information the
86 defense provides, the defense shall be entitled to a pretrial hearing and
87 determination on eligibility for the exemption.

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

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

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

110 (5) If the court finds that the state failed to rebut the
111 presumption, or the state failed to present evidence to prove, beyond
112 a reasonable doubt, that the accused did not have a serious mental
113 illness, or that the state failed to present evidence to prove, beyond a
114 reasonable doubt, that the serious mental illness, if present, did not
115 substantially impair his or her capacity at the time of the commission
116 of the offense, the court shall find that the exemption applies and

117 direct judgment on the matter of the exemption in favor of the
118 defendant.

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

126 7. A person's pleading of not guilty due to mental disease or
127 defect or incapacity to stand trial, or a finding after such a plea that
128 the person does not suffer from mental disease or defect or has
129 capacity to stand trial, does not preclude the person from raising the
130 matter of the person's serious mental illness at the time of the
131 commission of the offense under this section and, if a person so raises
132 that matter, does not limit or affect any of the procedures described in
133 this section or the authority of a court to make any finding described
134 in this section.

Bill
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