

SECOND REGULAR SESSION

SENATE BILL NO. 590

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4323S.011

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, and to enact in lieu thereof seven new sections relating to first degree murder, with penalty provisions, an emergency clause for certain sections and an effective date for certain sections.

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
2 556.061 as enacted by house bill no. 1371, ninety-seventh general assembly,
3 second regular session, and section 556.061 as enacted by house bill no. 215
4 merged with house bill no. 505, ninety-seventh general assembly, first regular
5 session are repealed and seven new sections enacted in lieu thereof, to be known
6 as sections 556.061, 556.061, 565.020, 565.030, 565.032, 565.033, and 565.040, to
7 read as follows:

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

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

6 (2) "Affirmative defense":

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

9 (b) If the defense is submitted to the trier of fact the defendant has the

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

10 burden of 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
13 supported by evidence; and

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

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

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

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

34 (7) "Computer hardware", all equipment which can collect, analyze, create,
35 display, convert, store, conceal or transmit electronic, magnetic, optical or similar
36 computer impulses or data. Hardware includes, but is not limited to, any data
37 processing devices, such as central processing units, memory typewriters and
38 self-contained laptop or notebook computers; internal and peripheral storage
39 devices, transistor-like binary devices and other memory storage devices, such as
40 floppy disks, removable disks, compact disks, digital video disks, magnetic tape,
41 hard drive, optical disks and digital memory; local area networks, such as two or
42 more computers connected together to a central computer server via cable or
43 modem; peripheral input or output devices, such as keyboards, printers, scanners,
44 plotters, video display monitors and optical readers; and related communication
45 devices, such as modems, cables and connections, recording equipment, RAM or

46 ROM units, acoustic couplers, automatic dialers, speed dialers, programmable
47 telephone dialing or signaling devices and electronic tone-generating devices; as
48 well as any devices, mechanisms or parts that can be used to restrict access to
49 computer hardware, such as physical keys and locks;

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

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

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

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

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

65 (13) "Confinement":

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

103 (19) "Dangerous felony", the felonies of **murder in the first degree**,
104 arson in the first degree, assault in the first degree, attempted rape in the first
105 degree if physical injury results, attempted forcible rape if physical injury results,
106 attempted sodomy in the first degree if physical injury results, attempted forcible
107 sodomy if physical injury results, rape in the first degree, forcible rape, sodomy
108 in the first degree, forcible sodomy, assault in the second degree if the victim of
109 such assault is a special victim as defined in subdivision (14) of section 565.002,
110 kidnapping in the first degree, kidnapping, murder in the second degree, assault
111 of a law enforcement officer in the first degree, domestic assault in the first
112 degree, elder abuse in the first degree, robbery in the first degree, statutory rape
113 in the first degree when the victim is a child less than twelve years of age at the
114 time of the commission of the act giving rise to the offense, statutory sodomy in
115 the first degree when the victim is a child less than twelve years of age at the
116 time of the commission of the act giving rise to the offense, child molestation in
117 the first or second degree, abuse of a child if the child dies as a result of injuries

118 sustained from conduct chargeable under section 568.060, child kidnapping,
119 parental kidnapping committed by detaining or concealing the whereabouts of the
120 child for not less than one hundred twenty days under section 565.153, and an
121 "intoxication-related traffic offense" or "intoxication-related boating offense" if the
122 person is found to be a "habitual offender" or "habitual boating offender" as such
123 terms are defined in section 577.001;

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

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

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

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

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

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

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

147 (27) "Forcible compulsion" either:

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

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

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

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

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

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

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

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

162 Any such vehicle, vessel, or structure is inhabitable regardless of whether a
163 person is actually present.

164 If a building or structure is divided into separately occupied units, any unit not
165 occupied by the actor is an inhabitable structure of another;

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

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

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

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

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

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

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

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

188 (37) "Place of confinement", any building or facility and the grounds
189 thereof wherein a court is legally authorized to order that a person charged with

190 or convicted of a crime be held;

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

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

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

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

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

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

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

223 (45) "Services", when used in relation to a computer system or network,
224 means use of a computer, computer system, or computer network and includes,
225 but is not limited to, computer time, data processing, and storage or retrieval

226 functions;

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

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

232 (48) "Vessel", any boat or craft propelled by a motor or by machinery,
233 whether or not such motor or machinery is a principal source of propulsion used
234 or capable of being used as a means of transportation on water, or any boat or
235 craft more than twelve feet in length which is powered by sail alone or by a
236 combination of sail and machinery, and used or capable of being used as a means
237 of transportation on water, but not any boat or craft having, as the only means
238 of propulsion, a paddle or oars;

239 (49) "Voluntary act":

240 (a) A bodily movement performed while conscious as a result of effort or
241 determination. Possession is a voluntary act if the possessor knowingly procures
242 or receives the thing possessed, or having acquired control of it was aware of his
243 or her control for a sufficient time to have enabled him or her to dispose of it or
244 terminate his or her control; or

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

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

556.061. In this code, unless the context requires a different definition,
2 the following 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
5 556.051;

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

11 (4) "Confinement":

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (8) "Dangerous felony" means the felonies of **murder in the first**
42 **degree**, arson in the first degree, assault in the first degree, attempted rape in
43 the first degree if physical injury results, attempted forcible rape if physical
44 injury results, attempted sodomy in the first degree if physical injury results,
45 attempted forcible sodomy if physical injury results, rape in the first degree,
46 forcible rape, sodomy in the first degree, forcible sodomy, kidnapping, murder in

47 the second degree, assault of a law enforcement officer in the first degree,
48 domestic assault in the first degree, elder abuse in the first degree, robbery in the
49 first degree, statutory rape in the first degree when the victim is a child less than
50 twelve years of age at the time of the commission of the act giving rise to the
51 offense, statutory sodomy in the first degree when the victim is a child less than
52 twelve years of age at the time of the commission of the act giving rise to the
53 offense, and, abuse of a child if the child dies as a result of injuries sustained
54 from conduct chargeable under section 568.060, child kidnapping, and parental
55 kidnapping committed by detaining or concealing the whereabouts of the child for
56 not less than one hundred twenty days under section 565.153;

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

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

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

65 (12) "Forcible compulsion" means either:

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

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

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

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

73 (15) "Inhabitable structure" has the meaning specified in section 569.010;

74 (16) "Knowingly" has the meaning specified in section 562.016;

75 (17) "Law enforcement officer" means any public servant having both the
76 power and duty to make arrests for violations of the laws of this state, and
77 federal law enforcement officers authorized to carry firearms and to make arrests
78 for violations of the laws of the United States;

79 (18) "Misdemeanor" has the meaning specified in section 556.016;

80 (19) "Offense" means any felony, misdemeanor or infraction;

81 (20) "Physical injury" means physical pain, illness, or any impairment of
82 physical condition;

83 (21) "Place of confinement" means any building or facility and the grounds
84 thereof wherein a court is legally authorized to order that a person charged with
85 or convicted of a crime be held;

86 (22) "Possess" or "possessed" means having actual or constructive
87 possession of an object with knowledge of its presence. A person has actual
88 possession if such person has the object on his or her person or within easy reach
89 and convenient control. A person has constructive possession if such person has
90 the power and the intention at a given time to exercise dominion or control over
91 the object either directly or through another person or persons. Possession may
92 also be sole or joint. If one person alone has possession of an object, possession
93 is sole. If two or more persons share possession of an object, possession is joint;

94 (23) "Public servant" means any person employed in any way by a
95 government of this state who is compensated by the government by reason of such
96 person's employment, any person appointed to a position with any government of
97 this state, or any person elected to a position with any government of this state.
98 It includes, but is not limited to, legislators, jurors, members of the judiciary and
99 law enforcement officers. It does not include witnesses;

100 (24) "Purposely" has the meaning specified in section 562.016;

101 (25) "Recklessly" has the meaning specified in section 562.016;

102 (26) "Ritual" or "ceremony" means an act or series of acts performed by
103 two or more persons as part of an established or prescribed pattern of activity;

104 (27) "Serious emotional injury", an injury that creates a substantial risk
105 of temporary or permanent medical or psychological damage, manifested by
106 impairment of a behavioral, cognitive or physical condition. Serious emotional
107 injury shall be established by testimony of qualified experts upon the reasonable
108 expectation of probable harm to a reasonable degree of medical or psychological
109 certainty;

110 (28) "Serious physical injury" means physical injury that creates a
111 substantial risk of death or that causes serious disfigurement or protracted loss
112 or impairment of the function of any part of the body;

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

117 (30) "Sexual contact" means any touching of the genitals or anus of any
118 person, or the breast of any female person, or any such touching through the

119 clothing, for the purpose of arousing or gratifying sexual desire of any person;

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

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

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

4 2. **The offense of** murder in the first degree is a class A felony, and, **if**
5 **a person is eighteen years of age or older at the time of the offense**, the
6 punishment shall be either death or imprisonment for life without eligibility for
7 probation or parole, or release except by act of the governor[; except that,]. If a
8 person has not reached his [sixteenth] **or her eighteenth** birthday at the time
9 of the commission of the [crime] **offense**, the punishment shall be [imprisonment
10 for life without eligibility for probation or parole, or release except by act of the
11 governor] **as provided under section 565.033.**

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 [with a single stage trial in which guilt and punishment are
5 submitted together].

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

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

22 criminal cases.

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

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

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

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

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

58 punishment for murder in the first degree.

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

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

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

565.032. 1. In all cases of murder in the first degree for which the death
2 penalty is authorized, the judge in a jury-waived trial shall consider, or [he] shall
3 include in his **or her** instructions to the jury for it to consider:

4 (1) Whether a statutory aggravating circumstance or circumstances
5 enumerated in subsection 2 of this section is established by the evidence beyond
6 a reasonable doubt; and

7 (2) If a statutory aggravating circumstance or circumstances is proven
8 beyond a reasonable doubt, whether the evidence as a whole justifies a sentence
9 of death or a sentence of life imprisonment without eligibility for probation,
10 parole, or release except by act of the governor. In determining the issues
11 enumerated in subdivisions (1) and (2) of this subsection, the trier shall consider
12 all evidence which it finds to be in aggravation or mitigation of punishment,
13 including evidence received during the first stage of the trial and evidence
14 supporting any of the statutory aggravating or mitigating circumstances set out
15 in subsections 2 and 3 of this section. If the trier is a jury, it shall not be
16 instructed upon any specific evidence which may be in aggravation or mitigation
17 of punishment, but shall be instructed that each juror shall consider any evidence
18 which he **or she** considers to be aggravating or mitigating.

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

21 (1) The offense was committed by a person with a prior record of

22 conviction for murder in the first degree, or the offense was committed by a
23 person who has one or more serious assaultive criminal convictions;

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

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

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

33 (5) The murder in the first degree was committed against a judicial
34 officer, former judicial officer, prosecuting attorney or former prosecuting
35 attorney, circuit attorney or former circuit attorney, assistant prosecuting
36 attorney or former assistant prosecuting attorney, assistant circuit attorney or
37 former assistant circuit attorney, peace officer or former peace officer, elected
38 official or former elected official during or because of the exercise of his official
39 duty;

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

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

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

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

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

53 (11) The murder in the first degree was committed while the defendant
54 was engaged in the perpetration or was aiding or encouraging another person to
55 perpetrate or attempt to perpetrate a felony of any degree of rape, sodomy,
56 burglary, robbery, kidnapping, or any felony offense in chapter 195 **or 579**;

57 (12) The murdered individual was a witness or potential witness in any

58 past or pending investigation or past or pending prosecution, and was killed as
59 a result of his **or her** status as a witness or potential witness;

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

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

66 (15) The murder was committed for the purpose of concealing or
67 attempting to conceal any felony offense defined in chapter 195 **or 579**;

68 (16) The murder was committed for the purpose of causing or attempting
69 to cause a person to refrain from initiating or aiding in the prosecution of a felony
70 offense defined in chapter 195 **or 579**;

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

74 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

87 (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
2 **who was under the age of eighteen at the time of the commission of the**
3 **offense shall be sentenced as follows:**

4 (1) **A person who at the time of the commission of the offense**
5 **was sixteen years of age or older shall be sentenced to a term of**
6 **imprisonment for life without eligibility for probation, parole, or**

7 release, or a term of imprisonment, the minimum of which shall be at
8 least fifty years; and

9 (2) A person who at the time of the commission of the offense
10 was under sixteen years of age shall be sentenced to a term of
11 imprisonment for life without eligibility for probation, parole, or
12 release, or a term of imprisonment, the minimum of which shall be at
13 least thirty-five years.

14 2. If the prosecuting or circuit attorney intends to seek a
15 punishment of imprisonment for life without eligibility for probation,
16 parole, or release, the prosecuting or circuit attorney shall file a notice
17 of such intent after conviction and before sentencing.

18 3. Any person sentenced under section 565.020 to imprisonment
19 for life without eligibility for probation, parole, or release before the
20 effective date of this section for an offense committed when the person
21 was less than eighteen years of age whose case is not final for purposes
22 of appeal as of the effective date of this section may, within six months
23 of the effective date of this section, file a motion with the sentencing
24 court for a hearing to review the person's sentence for murder in the
25 first degree. If the person pleaded guilty or waived the right to a jury
26 trial when the person was originally sentenced, the sentencing hearing
27 shall be heard by a judge. If a jury sentenced the person, a new jury
28 shall be selected or a jury may be waived by agreement of both
29 parties. The sole purpose of the sentencing hearing shall be to
30 determine if the sentence of imprisonment for life without eligibility
31 for probation, parole, or conditional release shall remain or be
32 amended in accordance with this section.

33 4. The procedures provided under this section shall not apply to
34 any case that is final for purposes of appeal as of the effective date of
35 this section.

36 5. A case is final for purposes of appeal:

37 (1) When the time for filing an appeal in the Missouri court of
38 appeals has expired;

39 (2) If an appeal was filed in the Missouri court of appeals, when
40 the time for filing an application for transfer in the Missouri supreme
41 court has expired;

42 (3) If an application was filed for transfer to the Missouri
43 supreme court, when the application for transfer was denied or when

44 a timely filed motion for rehearing was denied; or

45 (4) If the Missouri supreme court granted transfer, when the
46 Missouri supreme court rendered its decision or when a timely filed
47 motion for rehearing was denied.

565.040. 1. In the event that the death penalty provided in this chapter
2 is held to be unconstitutional, any person convicted of murder in the first degree
3 shall be sentenced by the court to life imprisonment without eligibility for
4 probation, parole, or release except by act of the governor, with the exception that
5 when a specific aggravating circumstance found in a case is held to be
6 unconstitutional or invalid for another reason, the supreme court of Missouri is
7 further authorized to remand the case for resentencing or retrial of the
8 punishment pursuant to subsection 5 of section [565.036] **565.035**.

9 2. In the event that any death sentence imposed pursuant to this chapter
10 is held to be unconstitutional, the trial court which previously sentenced the
11 defendant to death shall cause the defendant to be brought before the court and
12 shall sentence the defendant to life imprisonment without eligibility for
13 probation, parole, or release except by act of the governor, with the exception that
14 when a specific aggravating circumstance found in a case is held to be
15 inapplicable, unconstitutional or invalid for another reason, the supreme court
16 of Missouri is further authorized to remand the case for retrial of the punishment
17 pursuant to subsection 5 of section 565.035.

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

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

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