

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 590**  
98TH GENERAL ASSEMBLY

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Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 25, 2016, with recommendation that the Senate Committee Substitute do pass.

4323S.02C

ADRIANE D. CROUSE, Secretary.

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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, and to enact in lieu thereof six 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  
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5 session are repealed and six new sections enacted in lieu thereof, to be known as  
6 sections 556.061, 565.020, 565.030, 565.032, 565.033, and 565.040, to read as  
7 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

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

9 (b) If the defense is submitted to the trier of fact the defendant has the  
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. (1) Any person who has been found guilty of murder in the  
19 first degree, and who was sixteen years of age or older and under the  
20 age of eighteen at the time of the commission of the offense, and who  
21 was sentenced to life without eligibility for probation or parole, or  
22 release except by act of the governor prior to June 25, 2012, shall be  
23 eligible for a parole hearing after having served fifty years.

24 (2) Any person who has been found guilty of murder in the first  
25 degree, and who was under the age of sixteen at the time of the  
26 commission of the offense, and who was sentenced to life without  
27 eligibility for probation or parole, or release except by act of the  
28 governor prior to June 25, 2012, shall be eligible for a parole hearing  
29 after having served thirty-five years.

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.

Bill  
✓  
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