

# SENATE BILL NO. 859

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

3916S.01I

KRISTINA MARTIN, Secretary

## AN ACT

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

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

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2 repealed and three new sections enacted in lieu thereof, to be  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

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

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

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

565.028. 1. A defendant shall be ineligible for a sentence of death if the defendant:

(1) Has been diagnosed with one or more of the following conditions:

(a) Schizophrenia;

(b) Schizoaffective disorder;

(c) Bipolar disorder, with psychotic features;

(d) Major depressive disorder, with psychotic features;

(e) Delusional disorders;

(f) Traumatic brain injury; or

(g) Posttraumatic stress disorder (PTSD); and

(2) Has significantly impaired capacity to do one or more of the following:

(a) Exercise rational judgment in relation to the defendant's conduct;

(b) Conform the defendant's conduct to the requirements of law; or

(c) Appreciate the nature, consequences, or wrongfulness of the defendant's conduct.

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

3. Evidence to show the existence of a serious mental illness may include, but is not limited to, the following:

(1) Existence of active psychosis;

(2) Delusions;

(3) Hallucinations;

(4) Disorganized or irrational thinking;

(5) Erroneous perceptions of reality;

(6) Mania;

33           (7) Significant disruptions of consciousness and  
34 memory;

35           (8) Grossly disorganized or abnormal motor behavior,  
36 including catatonia; or

37           (9) Any other evidence relevant to show the conditions  
38 described under subdivision (1) of subsection 1 of this  
39 section.

40           4. The diagnosis of a defendant with a condition or  
41 conditions described in subdivision (1) of subsection 1 of  
42 this section may be made at any time prior to, on, or after  
43 the date of the commission of the offense or the day on  
44 which the defendant raises the matter of having suffered  
45 from a serious mental illness at the time of the commission  
46 of the offense. Diagnosis of the condition or conditions  
47 after the date of the commission of the offense does not  
48 preclude the defendant from presenting evidence that the  
49 defendant had a serious mental illness at the time of the  
50 commission of the offense or from having the benefit of the  
51 rebuttable presumption.

52           5. (1) If the defendant raises the matter of the  
53 defendant's serious mental illness at the time of the  
54 commission of the offense, the court shall, at the request  
55 of the prosecuting or circuit attorney or the defendant,  
56 order an evaluation of the defendant in accordance with the  
57 provisions of this section.

58           (2) The prosecuting or circuit attorney shall not use  
59 any evidence against the defendant acquired as a result of  
60 any evaluation ordered under this section or call any  
61 examiner who performed such an evaluation on the defendant  
62 as a witness against the defendant unless and until the  
63 defendant presents such evidence at a hearing on the matter  
64 of the defendant's serious mental illness at the time of the

65 commission of the offense. The prosecuting or circuit  
66 attorney may then call the examiner and use the information  
67 the examiner obtained at the hearing on this issue.

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

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

80 6. If a defendant raises the matter of having a  
81 serious mental illness at the time of the commission of the  
82 offense and submits prima facie evidence that he or she has  
83 a serious mental illness as described in subsection 1 of  
84 this section and that the condition existed at the time of  
85 the commission of the offense, the prosecuting or circuit  
86 attorney shall have an opportunity to present evidence to  
87 contest the serious mental illness or to rebut the  
88 presumption that the condition, if present, significantly  
89 impaired the defendant's capacity at the time of the  
90 commission of the offense as provided in subdivision (2) of  
91 subsection 1 of this section. The prosecuting or circuit  
92 attorney shall have the burden of proving beyond a  
93 reasonable doubt that the serious mental illness did not  
94 exist at the time of the commission of the offense or, if  
95 present, to establish beyond a reasonable doubt that the  
96 serious mental illness did not significantly impair the

97 defendant's capacity at the time of the commission of the  
98 offense.

99         7. (1) If a defendant raises the matter of having  
100 suffered from a serious mental illness at the time of the  
101 commission of the offense, and the prosecuting or circuit  
102 attorney contests the application of the exemption based on  
103 the information the defendant provides, the defendant shall  
104 be entitled to a pretrial hearing and determination on  
105 eligibility for the exemption.

106         (2) If the court finds that the prosecuting or circuit  
107 attorney has failed to rebut the presumption; or the  
108 prosecuting or circuit attorney failed to present evidence  
109 to prove beyond a reasonable doubt that the defendant did  
110 not have a serious mental illness; or the prosecuting or  
111 circuit attorney failed to prove that the serious mental  
112 illness, if present, did not substantially impair the  
113 defendant's capacity at the time of the commission of the  
114 offense, the court shall find that the exemption applies and  
115 direct judgment on the matter of the exemption in favor of  
116 the defendant.

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

125         (4) If the defendant does not meet the standard to be  
126 found not guilty by reason of mental disease or defect under  
127 section 552.030, incompetent to stand trial as described in  
128 section 552.020, or for mental disease or defect under

129 subdivision (8) of subsection 2 of section 552.015, it shall  
130 not prejudice the defendant's right to raise the matter of  
131 having suffered from a serious mental illness at the time of  
132 the offense pursuant to the provisions of this section.

133 8. A defendant's pleading of not guilty due to mental  
134 disease or defect or incapacity to stand trial, or a finding  
135 after such a plea that the defendant does not suffer from  
136 mental disease or defect or has capacity to stand trial,  
137 shall not preclude the defendant from raising the matter of  
138 the defendant's serious mental illness at the time of the  
139 commission of the offense under this section and, if a  
140 defendant so raises that matter, shall not limit or affect  
141 any of the procedures described in this section or the  
142 authority of a court to make any finding described in this  
143 section.

565.030. 1. Where murder in the first degree is  
2 charged but not submitted or where the state waives the  
3 death penalty, the submission to the trier and all  
4 subsequent proceedings in the case shall proceed as in all  
5 other criminal cases.

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

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

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

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

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

50           (3) If the trier concludes that there is evidence in  
51 mitigation of punishment, including but not limited to  
52 evidence supporting the statutory mitigating circumstances  
53 listed in subsection 3 of section 565.032, which is  
54 sufficient to outweigh the evidence in aggravation of  
55 punishment found by the trier; or

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

59 If the trier assesses and declares the punishment at death  
60 it shall, in its findings or verdict, set out in writing the  
61 aggravating circumstance or circumstances listed in  
62 subsection 2 of section 565.032 which it found beyond a  
63 reasonable doubt. If the trier is a jury, it shall be  
64 instructed before the case is submitted that if it is unable  
65 to decide or agree upon the punishment the court shall  
66 assess and declare the punishment at life imprisonment  
67 without eligibility for probation, parole, or release except  
68 by act of the governor [or death]. The court shall follow  
69 the same procedure as set out in this section whenever it is  
70 required to determine punishment for murder in the first  
71 degree.

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

78           6. As used in this section, the terms "intellectual  
79 disability" or "intellectually disabled" refer to a  
80 condition involving substantial limitations in general



81 functioning characterized by significantly subaverage  
82 intellectual functioning with continual extensive related  
83 deficits and limitations in two or more adaptive behaviors  
84 such as communication, self-care, home living, social  
85 skills, community use, self-direction, health and safety,  
86 functional academics, leisure and work, which conditions are  
87 manifested and documented before eighteen years of age.

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

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