

SECOND REGULAR SESSION

SENATE BILL NO. 790

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time January 28, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5333S.03I

AN ACT

To repeal sections 556.061, 565.020, 565.030, 565.032, and 565.040, RSMo, 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 a certain section.

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

Section A. Sections 556.061, 565.020, 565.030, 565.032, and 565.040, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 556.061, 565.020, 565.030, 565.032, 565.033, and 565.040, to read as follows:

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

- (1) "Affirmative defense" has the meaning specified in section 556.056;
- (2) "Burden of injecting the issue" has the meaning specified in section 556.051;
- (3) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency;
- (4) "Confinement":
 - (a) A person is in confinement when such person is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:
 - a. A court orders the person's release; or

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

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

22 [4.] 3. If the trier at the first stage of a trial where the death penalty was
23 not waived finds the defendant guilty of murder in the first degree, a second stage
24 of the trial shall proceed at which the only issue shall be the punishment to be
25 assessed and declared. Evidence in aggravation and mitigation of punishment,
26 including but not limited to evidence supporting any of the aggravating or

27 mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be
28 presented subject to the rules of evidence at criminal trials. Such evidence may
29 include, within the discretion of the court, evidence concerning the murder victim
30 and the impact of the [crime] **offense** upon the family of the victim and
31 others. Rebuttal and surrebuttal evidence may be presented. The state shall be
32 the first to proceed. If the trier is a jury it shall be instructed on the law. The
33 attorneys may then argue the issue of punishment to the jury, and the state shall
34 have the right to open and close the argument. The trier shall assess and declare
35 the punishment at life imprisonment without eligibility for probation, parole, or
36 release except by act of the governor:

37 (1) If the trier finds by a preponderance of the evidence that the
38 defendant is mentally retarded; or

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

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

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

58 [5.] 4. Upon written agreement of the parties and with leave of the court,
59 the issue of the defendant's mental retardation may be taken up by the court and
60 decided prior to trial without prejudicing the defendant's right to have the issue
61 submitted to the trier of fact as provided in subsection 4 of this section.

62 [6.] 5. As used in this section, the terms "mental retardation" or

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

70 [7.] 6. The provisions of this section shall only govern offenses committed
71 on 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] **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] 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] 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. In determining whether to impose a sentence of life without
19 eligibility for probation, parole, or conditional release, the trier shall
20 consider and make findings on the record regarding the following:

21 (1) The impact of the offense on each victim, including oral and
22 written victim impact statements made or submitted by family members
23 of the victim detailing the physical, psychological, and economic effects
24 of the offense on the victim and the victim's family. A victim impact
25 statement may include comment on the sentence of the defendant;

26 (2) The impact of the offense on the community;

27 (3) The threat to the safety of the public or any individual posed
28 by the defendant;

29 (4) The nature and circumstances of the offense committed by
30 the defendant;

31 (5) The degree of the defendant's culpability;

32 (6) The history and character of the defendant; and

33 (7) Age-related characteristics of the defendant, including:

34 (a) Age;

35 (b) Mental capacity;

36 (c) Maturity;

37 (d) The degree of criminal sophistication exhibited by the
38 defendant;

39 (e) The nature and extent of any prior delinquent or criminal
40 history, including the success or failure of any previous attempts by the
41 court to rehabilitate the defendant;

42 (f) Probation or institutional reports; and

43 (g) Other relevant factors.

44 4. Any person sentenced under section 565.020 to imprisonment
45 for life without eligibility for probation, parole, or release before the
46 effective date of this section for an offense committed when the person
47 was less than eighteen years of age whose case is not final for purposes
48 of appeal as of the effective date of this section may, within six months
49 of the effective date of this section, file a motion with the sentencing

50 court for a hearing to review the person's sentence for murder in the
51 first degree. If the person pleaded guilty or waived the right to a jury
52 trial when the person was originally sentenced, the sentencing hearing
53 shall be heard by a judge. If a jury sentenced the person, a new jury
54 shall be selected or a jury may be waived by agreement of both
55 parties. The sole purpose of the sentencing hearing shall be to
56 determine if the sentence of imprisonment for life without eligibility
57 for probation, parole, or conditional release shall remain or be
58 amended in accordance with this section.

59 5. The procedures provided under this section shall not apply to
60 any case that is final for purposes of appeal as of the effective date of
61 this section.

62 6. A case is final for purposes of appeal:

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

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

68 (3) If an application was filed for transfer to the Missouri
69 supreme court, when the application for transfer was denied or when
70 a timely filed motion for rehearing was denied; or

71 (4) If the Missouri supreme court granted transfer, when the
72 Missouri supreme court rendered its decision or when a timely filed
73 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 sections 556.061 and 565.020
5 and the enactment of section 565.033 of this act is deemed necessary for the
6 immediate preservation of the public health, welfare, peace and safety, and is
7 hereby declared to be an emergency act within the meaning of the constitution,
8 and the repeal and reenactment of sections 556.061 and 565.020 and the
9 enactment of section 565.033 of this act shall be in full force and effect upon its
10 passage and approval.

Section C. The repeal and reenactment of section 565.032 of this act shall
2 become effective January 1, 2016.

✓
Bill

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