

FIRST REGULAR SESSION

# HOUSE BILL NO. 619

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES ELLINGER (Sponsor), WALTON GRAY,  
SWEARINGEN AND RIZZO (Co-sponsors).

0779L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 547.035, 547.037, 565.020, and 565.032, RSMo, and to enact in lieu thereof four new sections relating to first degree murder, with a penalty provision.

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

Section A. Sections 547.035, 547.037, 565.020, and 565.032, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 547.035, 547.037, 565.020,  
3 and 565.032, to read as follows:

547.035. 1. A person in the custody of the department of corrections claiming that  
2 forensic DNA testing will demonstrate the person's innocence of the crime for which the person  
3 is in custody may file a postconviction motion in the sentencing court seeking such testing. **A  
4 person who has been sentenced to death may file such a motion if the testing will  
5 demonstrate the person's innocence as it relates to any aggravating factor of the crime that  
6 led to the person being sentenced to death even if the person cannot claim that he or she  
7 is innocent of first degree murder.** The procedure to be followed for such motions is governed  
8 by the rules of civil procedure insofar as applicable.

9 2. The motion must allege facts under oath demonstrating that:

10 (1) There is evidence upon which DNA testing can be conducted; and

11 (2) [The evidence was secured in relation to the crime; and

12 (3)] **There is a reasonable likelihood that additional testing would produce more  
13 probative results, or** the evidence was not previously tested by the movant because:

14 (a) The technology for the testing was not reasonably available to the movant at the time  
15 of the trial;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (b) Neither the movant nor his or her trial counsel was aware of the existence of the  
17 evidence at the time of trial; or

18 (c) The evidence was otherwise unavailable to both the movant and movant's trial  
19 counsel at the time of trial; and

20 [(4)] (3) Identity was an issue in the trial; and

21 [(5)] (4) A reasonable probability exists that the movant would not have been convicted  
22 if exculpatory results had been obtained through the requested DNA testing, **or if the movant**  
23 **has been sentenced to death, that such person would not have been sentenced to death.**

24 3. Movant shall file the motion and two copies thereof with the clerk of the sentencing  
25 court. The clerk shall file the motion in the original criminal case and shall immediately deliver  
26 a copy of the motion to the prosecutor.

27 4. The court shall issue to the prosecutor an order to show cause why the motion should  
28 not be granted unless:

29 (1) It appears from the motion that the movant is not entitled to relief; or

30 (2) The court finds that the files and records of the case conclusively show that the  
31 movant is not entitled to relief.

32 5. Upon the issuance of the order to show cause, the clerk shall notify the court reporter  
33 to prepare and file the transcript of the trial or the movant's guilty plea and sentencing hearing  
34 if the transcript has not been prepared or filed.

35 6. If the court finds that the motion and the files and records of the case conclusively  
36 show that the movant is not entitled to relief, a hearing shall not be held. If a hearing is ordered,  
37 counsel shall be appointed to represent the movant if the movant is indigent. The hearing shall  
38 be on the record. Movant need not be present at the hearing. The court may order that testimony  
39 of the movant shall be received by deposition. The movant shall have the burden of proving the  
40 allegations of the motion by a preponderance of the evidence.

41 7. The court shall order appropriate testing if the court finds:

42 (1) A reasonable probability exists that the movant would not have been convicted **or**  
43 **sentenced to death** if exculpatory results had been obtained through the requested DNA testing;  
44 and

45 (2) That movant is entitled to relief. Such testing shall be conducted by a facility  
46 mutually agreed upon by the movant and by the state and approved by the court. If the parties  
47 are unable to agree, the court shall designate the testing facility. The court shall impose  
48 reasonable conditions on the testing to protect the state's interests in the integrity of the evidence  
49 and the testing process.

50 8. The court shall issue findings of fact and conclusions of law whether or not a hearing  
51 is held.

547.037. 1. If testing ordered pursuant to section 547.035 demonstrates a person's innocence of the crime for which the person is in custody **or demonstrates a person's innocence regarding the aggravating circumstance or circumstances relied on by the trier of fact when sentencing the offender to death**, a motion for release **or motion for a new sentence** may be filed in the sentencing court.

2. The court shall issue to the prosecutor an order to show cause why the motion should not be granted. The prosecutor shall file a response consenting to or opposing the motion.

3. If the prosecutor consents to the motion and if the court finds that such testing demonstrates the movant's innocence of the crime for which he or she is in custody, the court shall order the movant's release from the sentence for the crime for which testing occurred. **If the prosecutor consents to the motion and the court finds that the testing demonstrates the person's innocence as it relates to the aggravating circumstance or circumstances relied on by the trier of fact when sentencing the offender to death, the court shall order the person to serve a sentence of imprisonment for life without eligibility for probation, parole, or release except by act of the governor.**

4. If the prosecutor files a response opposing the movant's release, the court shall conduct a hearing. If a hearing is ordered, the public defender shall be appointed to represent the movant if the movant is indigent. The hearing shall be on the record. The movant shall have the burden of proving the allegations of the motion by a preponderance of the evidence.

5. If the court finds that the testing ordered pursuant to section 547.035 demonstrates the movant's innocence of the crime for which he or she is in custody, the court shall order the movant's release from the sentence for the crime for which the testing occurred. **If the court finds that the testing demonstrates the person's innocence as it relates to the aggravating circumstance or circumstances relied on by the trier of fact when sentencing the offender to death, the court shall order the person to serve a sentence of imprisonment for life without eligibility for probation, parole, or release except by act of the governor.** Otherwise, relief shall be denied the movant.

6. The court shall issue findings of fact and conclusions of law whether or not a hearing is held. An appeal may be taken from the court's findings and conclusions as in other civil cases.

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

2. Murder in the first degree is a class A felony[, and the punishment shall be either death or imprisonment for life without eligibility for probation or parole, or release except by act of the governor; except that, if a person has not reached his sixteenth birthday at the time of the commission of the crime, the punishment shall be imprisonment for life without eligibility for probation or parole, or release except by act of the governor] . **The punishment for a person**

8 **eighteen years of age or older who engaged in the act that caused the victim's death,**  
9 **directed or controlled another person to commit the murder, or entered into an agreement**  
10 **with another person for that person to commit the murder shall be either death or**  
11 **imprisonment for life without eligibility for probation, parole, or release except by act of**  
12 **the governor. The punishment for a person who has not reached his or her eighteenth**  
13 **birthday at the time of the commission of the crime, regardless of the circumstances of the**  
14 **first degree murder, shall be life without eligibility for probation, parole, or release until**  
15 **the person has served a minimum prison term of twenty-five years. The punishment for**  
16 **a person eighteen years of age or older who has been found guilty of first degree murder,**  
17 **but who did not engage in the act that caused the death, or did not direct or control**  
18 **another person, or enter into an agreement with another person, to commit the murder**  
19 **shall be life without eligibility for probation, parole, or release except by act of the**  
20 **governor.**

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

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

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

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

21 (1) The offense was committed by a person with a prior record of conviction for murder  
22 in the first degree[, or the offense was committed by a person who has one or more serious

23 assaultive criminal convictions] **or was committed while the offender was subject to a term**  
24 **of life imprisonment without eligibility for probation, parole, or conditional release;**

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

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

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

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

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

40 (7) The murder in the first degree [was outrageously or wantonly vile, horrible or  
41 inhuman in that it] involved [torture, or depravity of mind] **the infliction of severe physical**  
42 **pain during or immediately prior to the murder for the purpose of making the victim**  
43 **suffer before dying;**

44 [(8)] (3) The murder in the first degree was committed against any peace officer,  
45 **employee of a correctional institution or facility,** or [fireman] **firefighter** while engaged in  
46 the performance of [his] **such person's** official duty;

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

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

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

56 (12) The murdered individual was a witness or potential witness in any past or pending  
57 investigation or past or pending prosecution, and was killed as a result of his status as a witness  
58 or potential witness;

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

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

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

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

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

72 **(4) The murder was committed in furtherance of a purposeful attack on the**  
73 **government of the state or any of its political subdivisions;**

74 **(5) The murder was committed for the purpose of interfering with or retaliating**  
75 **against a pending criminal investigation or proceeding; or**

76 **(6) The offender committed murder in the first degree against two or more victims.**

77 3. Statutory mitigating circumstances shall include the following:

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

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

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

82 (4) [The defendant was an accomplice in the murder in the first degree committed by  
83 another person and his participation was relatively minor;

84 (5)] The defendant acted under extreme duress or under the substantial domination of  
85 another person;

86 [(6)] **(5)** The capacity of the defendant to appreciate the criminality of his conduct or to  
87 conform his conduct to the requirements of law was substantially impaired;

88 [(7)] **(6)** The age of the defendant at the time of the crime.

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