

SECOND REGULAR SESSION

# HOUSE BILL NO. 1496

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HUBBARD (Sponsor), KELLY (24), SPRENG, CARTER, PACE,  
COLONA, MEADOWS, SMITH (71), PIERSON, CARLSON, WEBB, NASHEED,  
ATKINS AND OXFORD (Co-sponsors).

5189L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 546.680, 546.690, 546.700, 546.710, 546.720, 546.730, 546.740, 546.750,  
546.800, 546.810, 546.820, 557.021, 558.019, 565.005, 565.006, 565.020, 565.030,  
565.032, 565.035, and 565.040, RSMo, and to enact in lieu thereof six new sections  
relating to eliminating the death penalty, with penalty provisions.

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

Section A. Sections 546.680, 546.690, 546.700, 546.710, 546.720, 546.730, 546.740,  
2 546.750, 546.800, 546.810, 546.820, 557.021, 558.019, 565.005, 565.006, 565.020, 565.030,  
3 565.032, 565.035, and 565.040, RSMo, are repealed and six new sections enacted in lieu thereof,  
4 to be known as sections 557.021, 558.008, 558.019, 565.006, 565.020, and 565.040, to read as  
5 follows:

557.021. 1. Any offense defined outside this code which is declared to be a  
2 misdemeanor without specification of the penalty therefor is a class A misdemeanor.

3 2. Any offense defined outside this code which is declared to be a felony without  
4 specification of the penalty therefor is a class D felony.

5 3. For the purpose of applying the extended term provisions of section 558.016 and the  
6 minimum prison term provisions of section 558.019 and for determining the penalty for attempts  
7 and conspiracies, offenses defined outside of this code shall be classified as follows:

8 (1) If the offense is a felony:

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.

9 (a) It is a class A felony if the authorized penalty includes [death,] life imprisonment,  
10 **imprisonment for life without eligibility for probation or parole, or release except by act**  
11 **of the governor**, or imprisonment for a term of twenty years or more;

12 (b) It is a class B felony if the maximum term of imprisonment authorized exceeds ten  
13 years but is less than twenty years;

14 (c) It is a class C felony if the maximum term of imprisonment authorized is ten years;

15 (d) It is a class D felony if the maximum term of imprisonment is less than ten years;

16 (2) If the offense is a misdemeanor:

17 (a) It is a class A misdemeanor if the authorized imprisonment exceeds six months in  
18 jail;

19 (b) It is a class B misdemeanor if the authorized imprisonment exceeds thirty days but  
20 is not more than six months;

21 (c) It is a class C misdemeanor if the authorized imprisonment is thirty days or less;

22 (d) It is an infraction if there is no authorized imprisonment.

**558.008. 1. Notwithstanding any other provision of law, a sentence of death shall  
2 not be imposed or executed on any offender for any offense committed by the offender.**

**3 2. Beginning on the effective date of this section the governor shall order an  
4 immediate halt to all executions in this state and in any case where the offender has  
5 previously had a death sentence imposed but such sentence has not yet been executed, the  
6 offender shall be brought before the original sentencing court for resentencing under the  
7 provisions of section 565.040.**

558.019. 1. This section shall not be construed to affect the powers of the governor  
2 under article IV, section 7, of the Missouri Constitution. This statute shall not affect those  
3 provisions of section 565.020, section 558.018 or section 571.015, which set minimum terms of  
4 sentences, or the provisions of section 559.115, relating to probation.

5 2. The provisions of subsections 2 to 5 of this section shall be applicable to all classes  
6 of felonies except those set forth in chapter 195, and those otherwise excluded in subsection 1  
7 of this section. For the purposes of this section, "prison commitment" means and is the receipt  
8 by the department of corrections of an offender after sentencing. For purposes of this section,  
9 prior prison commitments to the department of corrections shall not include commitment to a  
10 regimented discipline program established pursuant to section 217.378. Other provisions of the  
11 law to the contrary notwithstanding, any offender who has pleaded guilty to or has been found  
12 guilty of a felony other than a dangerous felony as defined in section 556.061 and is committed  
13 to the department of corrections shall be required to serve the following minimum prison terms:

14 (1) If the offender has one previous prison commitment to the department of corrections  
15 for a felony offense, the minimum prison term which the offender must serve shall be forty

16 percent of his or her sentence or until the offender attains seventy years of age, and has served  
17 at least thirty percent of the sentence imposed, whichever occurs first;

18 (2) If the offender has two previous prison commitments to the department of corrections  
19 for felonies unrelated to the present offense, the minimum prison term which the offender must  
20 serve shall be fifty percent of his or her sentence or until the offender attains seventy years of  
21 age, and has served at least forty percent of the sentence imposed, whichever occurs first;

22 (3) If the offender has three or more previous prison commitments to the department of  
23 corrections for felonies unrelated to the present offense, the minimum prison term which the  
24 offender must serve shall be eighty percent of his or her sentence or until the offender attains  
25 seventy years of age, and has served at least forty percent of the sentence imposed, whichever  
26 occurs first.

27 3. Other provisions of the law to the contrary notwithstanding, any offender who has  
28 pleaded guilty to or has been found guilty of a dangerous felony as defined in section 556.061  
29 and is committed to the department of corrections shall be required to serve a minimum prison  
30 term of eighty-five percent of the sentence imposed by the court or until the offender attains  
31 seventy years of age, and has served at least forty percent of the sentence imposed, whichever  
32 occurs first.

33 4. For the purpose of determining the minimum prison term to be served, the following  
34 calculations shall apply:

35 (1) A sentence of life shall be calculated to be thirty years;

36 (2) Any sentence either alone or in the aggregate with other consecutive sentences for  
37 crimes committed at or near the same time which is over seventy-five years shall be calculated  
38 to be seventy-five years.

39 5. For purposes of this section, the term "minimum prison term" shall mean time  
40 required to be served by the offender before he or she is eligible for parole, conditional release  
41 or other early release by the department of corrections.

42 6. (1) A sentencing advisory commission is hereby created to consist of eleven  
43 members. One member shall be appointed by the speaker of the house. One member shall be  
44 appointed by the president pro tem of the senate. One member shall be the director of the  
45 department of corrections. Six members shall be appointed by and serve at the pleasure of the  
46 governor from among the following: the public defender commission; private citizens; a private  
47 member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members  
48 shall be appointed by the supreme court, one from a metropolitan area and one from a rural area.  
49 All members shall be appointed to a four-year term. All members of the sentencing commission  
50 appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory  
51 commission at the pleasure of the governor.

52 (2) The commission shall study sentencing practices in the circuit courts throughout the  
53 state for the purpose of determining whether and to what extent disparities exist among the  
54 various circuit courts with respect to the length of sentences imposed and the use of probation  
55 for offenders convicted of the same or similar crimes and with similar criminal histories. The  
56 commission shall also study and examine whether and to what extent [sentencing disparity  
57 among economic and social classes exists in relation to the sentence of death and if so, the  
58 reasons therefor] **Missouri** sentences are comparable to other states, if the length of the sentence  
59 is appropriate, and the rate of rehabilitation based on sentence. [It shall compile statistics,  
60 examine cases, draw conclusions, and perform other duties relevant to the research and  
61 investigation of disparities in death penalty sentencing among economic and social classes.]

62 (3) The commission shall establish a system of recommended sentences, within the  
63 statutory minimum and maximum sentences provided by law for each felony committed under  
64 the laws of this state. This system of recommended sentences shall be distributed to all  
65 sentencing courts within the state of Missouri. The recommended sentence for each crime shall  
66 take into account, but not be limited to, the following factors:

67 (a) The nature and severity of each offense;

68 (b) The record of prior offenses by the offender;

69 (c) The data gathered by the commission showing the duration and nature of sentences  
70 imposed for each crime; and

71 (d) The resources of the department of corrections and other authorities to carry out the  
72 punishments that are imposed.

73 (4) The commission shall study alternative sentences, prison work programs, work  
74 release, home-based incarceration, probation and parole options, and any other programs and  
75 report the feasibility of these options in Missouri.

76 (5) The commission shall publish and distribute its recommendations on or before July  
77 1, 2004. The commission shall study the implementation and use of the recommendations until  
78 July 1, 2005, and return a report to the governor, the speaker of the house of representatives, and  
79 the president pro tem of the senate. Following the July 1, 2005, report, the commission shall  
80 revise the recommended sentences every two years.

81 (6) The governor shall select a chairperson who shall call meetings of the commission  
82 as required or permitted pursuant to the purpose of the sentencing commission.

83 (7) The members of the commission shall not receive compensation for their duties on  
84 the commission, but shall be reimbursed for actual and necessary expenses incurred in the  
85 performance of these duties and for which they are not reimbursed by reason of their other paid  
86 positions.

87 (8) The circuit and associate circuit courts of this state, the office of the state courts  
88 administrator, the department of public safety, and the department of corrections shall cooperate  
89 with the commission by providing information or access to information needed by the  
90 commission. The office of the state courts administrator will provide needed staffing resources.

91 7. Courts shall retain discretion to lower or exceed the sentence recommended by the  
92 commission as otherwise allowable by law, and to order restorative justice methods, when  
93 applicable.

94 8. If the imposition or execution of a sentence is suspended, the court may order any or  
95 all of the following restorative justice methods, or any other method that the court finds just or  
96 appropriate:

97 (1) Restitution to any victim or a statutorily created fund for costs incurred as a result  
98 of the offender's actions;

99 (2) Offender treatment programs;

100 (3) Mandatory community service;

101 (4) Work release programs in local facilities; and

102 (5) Community-based residential and nonresidential programs.

103 9. The provisions of this section shall apply only to offenses occurring on or after August  
104 28, 2003.

105 10. Pursuant to subdivision (1) of subsection 8 of this section, the court may order the  
106 assessment and payment of a designated amount of restitution to a county law enforcement  
107 restitution fund established by the county commission pursuant to section 50.565. Such  
108 contribution shall not exceed three hundred dollars for any charged offense. Any restitution  
109 moneys deposited into the county law enforcement restitution fund pursuant to this section shall  
110 only be expended pursuant to the provisions of section 50.565.

111 11. A judge may order payment to a restitution fund only if such fund had been created  
112 by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall  
113 not have any direct supervisory authority or administrative control over any fund to which the  
114 judge is ordering a defendant to make payment.

115 12. A defendant who fails to make a payment to a county law enforcement restitution  
116 fund may not have his or her probation revoked solely for failing to make such payment unless  
117 the judge, after evidentiary hearing, makes a finding supported by a preponderance of the  
118 evidence that the defendant either willfully refused to make the payment or that the defendant  
119 willfully, intentionally, and purposefully failed to make sufficient bona fide efforts to acquire the  
120 resources to pay.

565.006. 1. At any time before the commencement of the trial of a homicide offense,  
2 the defendant may, with the assent of the court, waive a trial by jury and agree to submit all

3 issues in the case to the court, whose finding shall have the force and effect of a verdict of a jury.  
4 Such a waiver must include a waiver of a trial by jury of all issues and offenses charged in the  
5 case, including the punishment to be assessed and imposed if the defendant is found guilty.

6 2. No defendant who pleads guilty to a homicide offense or who is found guilty of a  
7 homicide offense after trial to the court without a jury shall be permitted a trial by jury on the  
8 issue of the punishment to be imposed, except by agreement of the state.

9 3. [If a defendant is found guilty of murder in the first degree after a jury trial in which  
10 the state has not waived the death penalty, the defendant may not waive a jury trial of the issue  
11 of the punishment to be imposed, except by agreement with the state and the court.

12 4.] Any waiver of a jury trial and agreement permitted by this section shall be entered  
13 in the court record.

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

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

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

9 2. In the event that [any] **the legislature eliminates the death penalty, in any case**  
10 **where a death sentence has previously been** imposed pursuant to this chapter [is held to be  
11 unconstitutional] , **but has not been executed** the trial court which previously sentenced the  
12 defendant to death shall cause the defendant to be brought before the court and shall sentence  
13 the defendant to life imprisonment without eligibility for probation, parole, or release except by  
14 act of the governor[, with the exception that when a specific aggravating circumstance found in  
15 a case is held to be 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 pursuant to  
17 subsection 5 of section 565.035].

18

2 [546.680. When judgment of death is rendered by any court of competent  
3 jurisdiction, a warrant signed by the judge and attested by the clerk under the seal  
4 of the court must be drawn and delivered to the sheriff. It must state the  
5 conviction and judgment and appoint a day on which the judgment must be  
6 executed, which must not be less than thirty nor more than sixty days from the  
7 date of judgment, and must direct the sheriff to deliver the defendant, at a time  
8 specified in said order, not more than ten days from the date of judgment, to the  
9 chief administrative officer of a correctional facility of the department of  
10 corrections, for execution.]

2 [546.690. The judge of a court at which a conviction is had must,  
3 immediately after the conviction, transmit to the governor of the state, by mail or  
4 otherwise, a statement of the conviction and judgment.]

2 [546.700. Whenever, for any reason, any convict sentenced to the  
3 punishment of death shall not have been executed pursuant to such sentence, and  
4 the cause shall stand in full force, the supreme court, or the court of the county  
5 in which the conviction was had, on the application of the prosecuting attorney,  
6 shall issue a writ of habeas corpus to bring such convict before the court; or if he  
7 be at large, a warrant for his apprehension may be issued by such court, or any  
8 judge thereof.]

2 [546.710. Upon such convicted offender being brought before the court,  
3 they shall proceed to inquire into the facts, and if no legal reasons exist against  
4 the execution of sentence, such court shall issue a warrant to the director of the  
5 department of corrections, for the execution of the prisoner at the time therein  
6 specified, which execution shall be obeyed by the director accordingly.]

2 [546.720. 1. The manner of inflicting the punishment of death shall be  
3 by the administration of lethal gas or by means of the administration of lethal  
4 injection. And for such purpose the director of the department of corrections is  
5 hereby authorized and directed to provide a suitable and efficient room or place,  
6 enclosed from public view, within the walls of a correctional facility of the  
7 department of corrections, and the necessary appliances for carrying into  
8 execution the death penalty by means of the administration of lethal gas or by  
9 means of the administration of lethal injection.

10 2. The director of the department of corrections shall select an execution  
11 team which shall consist of those persons who administer lethal gas or lethal  
12 chemicals and those persons, such as medical personnel, who provide direct  
13 support for the administration of lethal gas or lethal chemicals. The identities of  
14 members of the execution team, as defined in the execution protocol of the  
15 department of corrections, shall be kept confidential. Notwithstanding any  
provision of law to the contrary, any portion of a record that could identify a

16 person as being a current or former member of an execution team shall be  
17 privileged and shall not be subject to discovery, subpoena, or other means of  
18 legal compulsion for disclosure to any person or entity, the remainder of such  
19 record shall not be privileged or closed unless protected from disclosure by law.  
20 The section of an execution protocol that directly relates to the administration of  
21 lethal gas or lethal chemicals is an open record, the remainder of any execution  
22 protocol of the department of corrections is a closed record.

23 3. A person may not, without the approval of the director of the  
24 department of corrections, knowingly disclose the identity of a current or former  
25 member of an execution team or disclose a record knowing that it could identify  
26 a person as being a current or former member of an execution team. Any person  
27 whose identity is disclosed in violation of this section shall:

28 (1) Have a civil cause of action against a person who violates this  
29 section;

30 (2) Be entitled to recover from any such person:

31 (a) Actual damages; and

32 (b) Punitive damages on a showing of a willful violation of this section.

33 4. Notwithstanding any provision of law to the contrary, if a member of  
34 the execution team is licensed by a board or department, the licensing board or  
35 department shall not censure, reprimand, suspend, revoke, or take any other  
36 disciplinary action against the person's license because of his or her participation  
37 in a lawful execution. All members of the execution team are entitled to  
38 coverage under the state legal expense fund established by section 105.711 for  
39 conduct of such execution team member arising out of and performed in  
40 connection with his or her official duties on behalf of the state or any agency of  
41 the state, provided that moneys in this fund shall not be available for payment of  
42 claims under chapter 287.]

43

2 [546.730. A judgment of death must be executed within a correctional  
3 center of the department of corrections; and such execution shall be under the  
4 supervision and direction of the director of the department of corrections.]

4

2 [546.740. The chief administrative officer of the correctional center, or  
3 his duly appointed representative shall be present at the execution and the  
4 director of the department of corrections shall invite the presence of the attorney  
5 general of the state, and at least eight reputable citizens, to be selected by him;  
6 and he shall at the request of the defendant, permit such clergy or religious  
7 leaders, not exceeding two, as the defendant may name, and any person, other  
8 than another incarcerated offender, relatives or friends, not to exceed five, to be  
9 present at the execution, together with such peace officers as he may think  
10 expedient, to witness the execution; but no person under twenty-one years of age  
11 shall be allowed to witness the execution.]

11



2 [546.750. After the execution the chief administrative officer of the  
3 correctional facility shall make a return upon the death warrant to the court by  
4 which the judgment was rendered, showing the time, mode and manner in which  
5 it was executed.]

2 [546.800. If, after any female convict shall be sentenced to the  
3 punishment of death, the officer having charge of her person shall have reason  
4 to suspect that she is pregnant, he shall in like manner summon a jury of six  
5 persons, not less than three of whom shall be physicians, and shall give notice  
6 thereof to the prosecuting attorney of the county where such criminal proceedings  
7 originated, or to the circuit attorney of the city of St. Louis, if such criminal  
8 proceedings originated in that city, who shall attend, and the proceedings shall  
9 be had as provided.]

2 [546.810. The inquisition shall be signed by the jury and the officer in  
3 charge of such convict, and if it appear that such female convict is pregnant with  
4 child, her execution shall be suspended and the inquisition shall be transmitted  
5 to the governor.]

2 [546.820. Whenever the governor shall be satisfied that the cause of such  
3 suspension no longer exists, he shall issue his warrant, appointing a day for the  
4 execution of such convict, pursuant to her sentence; or he may, at his discretion,  
5 commute her punishment to imprisonment in the penitentiary for life.]

2 [565.005. 1. At a reasonable time before the commencement of the first  
3 stage of any trial of murder in the first degree at which the death penalty is not  
4 waived, the state and defendant, upon request and without order of the court,  
5 shall serve counsel of the opposing party with:

6 (1) A list of all aggravating or mitigating circumstances as provided in  
7 subsection 1 of section 565.032, which the party intends to prove at the second  
8 stage of the trial;

9 (2) The names of all persons whom the party intends to call as witnesses  
10 at the second stage of the trial;

11 (3) Copies or locations and custodian of any books, papers, documents,  
12 photographs or objects which the party intends to offer at the second stage of the  
13 trial. If copies of such materials are not supplied to opposing counsel, the party  
14 shall cause them to be made available for inspection and copying without order  
15 of the court.

16 2. The disclosures required in subsection 1 of this section are  
17 supplemental to those required by rules of the supreme court relating to a  
18 continuing duty to disclose information, the use of matters disclosed, matters not  
subject to disclosure, protective orders, and sanctions for failure to comply with

19 an applicable discovery rule or order, all of which shall also apply to any  
20 disclosure required by this section.]  
21

2 [565.030. 1. Where murder in the first degree is charged but not  
3 submitted or where the state waives the death penalty, the submission to the trier  
4 and all subsequent proceedings in the case shall proceed as in all other criminal  
5 cases with a single stage trial in which guilt and punishment are submitted  
6 together.

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

16 3. If murder in the first degree is submitted and the death penalty was not  
17 waived but the trier finds the defendant guilty of a lesser homicide, a second  
18 stage of the trial shall proceed at which the only issue shall be the punishment to  
19 be assessed and declared. No further evidence shall be received. If the trier is a  
20 jury it shall be instructed on the law. The attorneys may then argue as in other  
21 criminal cases the issue of punishment, after which the trier shall assess and  
22 declare the punishment as in all other 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 upon the family of the victim and others. Rebuttal  
32 and surrebuttal evidence may be presented. The state shall be the first to proceed.  
33 If the trier is a jury it shall be instructed on the law. The attorneys may then  
34 argue the issue of punishment to the jury, and the state shall have the right to  
35 open and close the argument. The trier shall assess and declare the punishment  
36 at life imprisonment without eligibility for probation, parole, or release except by  
37 act of the governor:

38 (1) If the trier finds by a preponderance of the evidence that the 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. If  
49 the trier assesses and declares the punishment at death it shall, in its findings or  
50 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. Upon written agreement of the parties and with leave of the court, the  
59 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. As used in this section, the terms "mental retardation" or "mentally  
63 retarded" refer to a condition involving substantial limitations in general  
64 functioning characterized by significantly subaverage intellectual functioning  
65 with continual extensive related deficits and limitations in two or more adaptive  
66 behaviors such as communication, self-care, home living, social skills,  
67 community use, self-direction, health and safety, functional academics, leisure  
68 and work, which conditions are manifested and documented before eighteen  
69 years of age. 7. The provisions of this section shall only govern offenses  
70 committed on or after August 28, 2001.]

71

[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 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 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 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 another, for the purpose of receiving money or any other thing of  
32 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 attorney  
36 or former assistant prosecuting attorney, assistant circuit attorney or former  
37 assistant circuit attorney, peace officer or former peace officer, elected official or  
38 former elected official during or because of the exercise of his official duty;

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

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

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

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

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

52 (11) The murder in the first degree was committed while the defendant  
53 was engaged in the perpetration or was aiding or encouraging another person to

54 perpetrate or attempt to perpetrate a felony of any degree of rape, sodomy,  
55 burglary, robbery, kidnapping, or any felony offense in chapter 195;

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

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

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

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

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

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

72 3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

82 (6) The capacity of the defendant to appreciate the criminality of his  
83 conduct or to conform his conduct to the requirements of law was substantially  
84 impaired;

85 (7) The age of the defendant at the time of the crime.]

86

2 [565.035. 1. Whenever the death penalty is imposed in any case, and  
3 upon the judgment becoming final in the trial court, the sentence shall be  
4 reviewed on the record by the supreme court of Missouri. The circuit clerk of the  
5 court trying the case, within ten days after receiving the transcript, shall transmit  
6 the entire record and transcript to the supreme court together with a notice  
7 prepared by the circuit clerk and a report prepared by the trial judge. The notice  
8 shall set forth the title and docket number of the case, the name of the defendant  
9 and the name and address of his attorney, a narrative statement of the judgment,  
the offense, and the punishment prescribed. The report by the judge shall be in

10 the form of a standard questionnaire prepared and supplied by the supreme court  
11 of Missouri.

12 2. The supreme court of Missouri shall consider the punishment as well  
13 as any errors enumerated by way of appeal.

14 3. With regard to the sentence, the supreme court shall determine:

15 (1) Whether the sentence of death was imposed under the influence of  
16 passion, prejudice, or any other arbitrary factor; and

17 (2) Whether the evidence supports the jury's or judge's finding of a  
18 statutory aggravating circumstance as enumerated in subsection 2 of section  
19 565.032 and any other circumstance found;

20 (3) Whether the sentence of death is excessive or disproportionate to the  
21 penalty imposed in similar cases, considering both the crime, the strength of the  
22 evidence and the defendant.

23 4. Both the defendant and the state shall have the right to submit briefs  
24 within the time provided by the supreme court, and to present oral argument to  
25 the supreme court.

26 5. The supreme court shall include in its decision a reference to those  
27 similar cases which it took into consideration. In addition to its authority  
28 regarding correction of errors, the supreme court, with regard to review of death  
29 sentences, shall be authorized to:

30 (1) Affirm the sentence of death; or

31 (2) Set the sentence aside and resentence the defendant to life  
32 imprisonment without eligibility for probation, parole, or release except by act  
33 of the governor; or

34 (3) Set the sentence aside and remand the case for retrial of the  
35 punishment hearing. A new jury shall be selected or a jury may be waived by  
36 agreement of both parties and then the punishment trial shall proceed in  
37 accordance with this chapter, with the exception that the evidence of the guilty  
38 verdict shall be admissible in the new trial together with the official transcript of  
39 any testimony and evidence properly admitted in each stage of the original trial  
40 where relevant to determine punishment.

41 6. There shall be an assistant to the supreme court, who shall be an  
42 attorney appointed by the supreme court and who shall serve at the pleasure of  
43 the court. The court shall accumulate the records of all cases in which the  
44 sentence of death or life imprisonment without probation or parole was imposed  
45 after May 26, 1977, or such earlier date as the court may deem appropriate. The  
46 assistant shall provide the court with whatever extracted information the court  
47 desires with respect thereto, including but not limited to a synopsis or brief of the  
48 facts in the record concerning the crime and the defendant. The court shall be  
49 authorized to employ an appropriate staff, within the limits of appropriations  
50 made for that purpose, and such methods to compile such data as are deemed by  
51 the supreme court to be appropriate and relevant to the statutory questions  
52 concerning the validity of the sentence. The office of the assistant to the supreme

53 court shall be attached to the office of the clerk of the supreme court for  
54 administrative purposes.

55 7. In addition to the mandatory sentence review, there shall be a right of  
56 direct appeal of the conviction to the supreme court of Missouri. This right of  
57 appeal may be waived by the defendant. If an appeal is taken, the appeal and the  
58 sentence review shall be consolidated for consideration. The court shall render  
59 its decision on legal errors enumerated, the factual substantiation of the verdict,  
60 and the validity of the sentence.]

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