

FIRST REGULAR SESSION

SENATE BILL NO. 354

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS BRAY AND JUSTUS.

Read 1st time January 23, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1649S.011

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, 565.004, 565.006, 565.020, 565.030, 565.032, 565.035, and 565.040, RSMo, and to enact in lieu thereof four new sections relating to repealing the death penalty, with penalty provisions.

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, 546.750, 546.800, 546.810, 546.820, 565.004, 565.006, 565.020, 565.030, 565.032, 565.035, and 565.040, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 565.004, 565.006, 565.020, and 565.040, to read as follows:

565.004. 1. Each homicide offense which is lawfully joined in the same indictment or information together with any homicide offense or offense other than a homicide shall be charged together with such offense in separate counts. A count charging any offense of homicide may only be charged and tried together with one or more counts of any other homicide or offense other than a homicide as provided in subsection 2 of section 545.140, RSMo. Except as provided in subsections 2, 3, and 4 of this section, no murder in the first degree offense may be tried together with any offense other than murder in the first degree. In the event of a joinder of homicide offenses, all offenses charged which are supported by the evidence in the case, together with all proper lesser offenses under section 565.025, shall, when requested by one of the parties or the court, be submitted to the jury or, in a jury-waived trial, considered by the judge.

2. A count charging any offense of homicide of a particular individual may be joined in an indictment or information and tried with one or more counts

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

15 charging alternatively any other homicide or offense other than a homicide
16 committed against that individual. The state shall not be required to make an
17 election as to the alternative count on which it will proceed. This subsection in
18 no way limits the right to try in the conjunctive, where they are properly joined
19 under subsection 1 of this section, either separate offenses other than murder in
20 the first degree or separate offenses of murder in the first degree committed
21 against different individuals.

22 3. When a defendant has been charged and proven before trial to be a
23 prior offender pursuant to chapter 558, RSMo, so that the judge shall assess
24 punishment and not a jury for an offense other than murder in the first degree,
25 that offense may be tried and submitted to the trier together with any murder in
26 the first degree charge with which it is lawfully joined. In such case the judge
27 will assess punishment on any offense joined with a murder in the first degree
28 charge according to law and, when the trier is a jury, it shall be instructed upon
29 punishment on the charge of murder in the first degree in accordance with section
30 565.030.

31 [4. When the state waives the death penalty for a murder first degree
32 offense, that offense may be tried and submitted to the trier together with any
33 other charge with which it is lawfully joined.]

565.006. 1. At any time before the commencement of the trial of a
2 homicide offense, the defendant may, with the assent of the court, waive a trial
3 by jury and agree to submit all issues in the case to the court, whose finding shall
4 have the force and effect of a verdict of a jury. Such a waiver must include a
5 waiver of a trial by jury of all issues and offenses charged in the case, including
6 the punishment to be assessed and imposed if the defendant is found guilty.

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

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

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

565.020. 1. A person commits the crime of murder in the first degree if

2 [he] **such person** knowingly causes the death of another person after
3 deliberation upon the matter.

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

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
3 degree [shall be] **and** sentenced by the court to **death hereafter shall have**
4 **such sentence commuted to** life imprisonment without eligibility for
5 probation, parole, or release except by act of the governor[, with the exception
6 that when a specific aggravating circumstance found in a case is held to be
7 unconstitutional or invalid for another reason, the supreme court of Missouri is
8 further authorized to remand the case for resentencing or retrial of the
9 punishment pursuant to subsection 5 of section 565.036.

10 2. In the event that any death sentence imposed pursuant to this chapter
11 is held to be unconstitutional, the trial court which previously sentenced the
12 defendant to death shall cause the defendant to be brought before the court and
13 shall sentence the defendant to life imprisonment without eligibility for
14 probation, parole, or release except by act of the governor, with the exception that
15 when a specific aggravating circumstance found in a case is held to be
16 inapplicable, unconstitutional or invalid for another reason, the supreme court
17 of Missouri is further authorized to remand the case for retrial of the punishment
18 pursuant to subsection 5 of section 565.035].

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

1 [546.690. The judge of a court at which a conviction is had
2 must, immediately after the conviction, transmit to the governor of
3 the state, by mail or otherwise, a statement of the conviction and
4 judgment.]

1 [546.700. Whenever, for any reason, any convict sentenced
2 to the punishment of death shall not have been executed pursuant
3 to such sentence, and the cause shall stand in full force, the
4 supreme court, or the court of the county in which the conviction
5 was had, on the application of the prosecuting attorney, shall issue
6 a writ of habeas corpus to bring such convict before the court; or if
7 he be at large, a warrant for his apprehension may be issued by
8 such court, or any judge thereof.]

1 [546.710. Upon such convicted offender being brought
2 before the court, they shall proceed to inquire into the facts, and if
3 no legal reasons exist against the execution of sentence, such court
4 shall issue a warrant to the director of the department of
5 corrections, for the execution of the prisoner at the time therein
6 specified, which execution shall be obeyed by the director
7 accordingly.]

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

1 [546.730. A judgment of death must be executed within a
2 correctional center of the department of corrections; and such
3 execution shall be under the supervision and direction of the
4 director of the department of corrections.]

1 [546.740. The chief administrative officer of the correctional
2 center, or his duly appointed representative shall be present at the
3 execution and the director of the department of corrections shall

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

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

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

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

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

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

5 in which guilt and punishment are submitted together.

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

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

26 4. If the trier at the first stage of a trial where the death
27 penalty was not waived finds the defendant guilty of murder in the
28 first degree, a second stage of the trial shall proceed at which the
29 only issue shall be the punishment to be assessed and
30 declared. Evidence in aggravation and mitigation of punishment,
31 including but not limited to evidence supporting any of the
32 aggravating or mitigating circumstances listed in subsection 2 or
33 3 of section 565.032, may be presented subject to the rules of
34 evidence at criminal trials. Such evidence may include, within the
35 discretion of the court, evidence concerning the murder victim and
36 the impact of the crime upon the family of the victim and
37 others. Rebuttal and surrebuttal evidence may be presented. The
38 state shall be the first to proceed. If the trier is a jury it shall be
39 instructed on the law. The attorneys may then argue the issue of
40 punishment to the jury, and the state shall have the right to open

41 and close the argument. The trier shall assess and declare the
42 punishment at life imprisonment without eligibility for probation,
43 parole, or release except by act of the governor:

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

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

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

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

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

68 5. Upon written agreement of the parties and with leave of
69 the court, the issue of the defendant's mental retardation may be
70 taken up by the court and decided prior to trial without prejudicing
71 the defendant's right to have the issue submitted to the trier of fact
72 as provided in subsection 4 of this section.

73 6. As used in this section, the terms "mental retardation"
74 or "mentally retarded" refer to a condition involving substantial
75 limitations in general functioning characterized by significantly
76 subaverage intellectual functioning with continual extensive

77 related deficits and limitations in two or more adaptive behaviors
78 such as communication, self-care, home living, social skills,
79 community use, self-direction, health and safety, functional
80 academics, leisure and work, which conditions are manifested and
81 documented before eighteen years of age.

82 7. The provisions of this section shall only govern offenses
83 committed on or after August 28, 2001.]

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

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

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

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

25 (1) The offense was committed by a person with a prior
26 record of conviction for murder in the first degree, or the offense
27 was committed by a person who has one or more serious assaultive
28 criminal convictions;

29 (2) The murder in the first degree offense was committed

30 while the offender was engaged in the commission or attempted
31 commission of another unlawful homicide;

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

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

40 (5) The murder in the first degree was committed against
41 a judicial officer, former judicial officer, prosecuting attorney or
42 former prosecuting attorney, circuit attorney or former circuit
43 attorney, assistant prosecuting attorney or former assistant
44 prosecuting attorney, assistant circuit attorney or former assistant
45 circuit attorney, peace officer or former peace officer, elected official
46 or former elected official during or because of the exercise of his
47 official duty;

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

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

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

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

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

63 (11) The murder in the first degree was committed while
64 the defendant was engaged in the perpetration or was aiding or
65 encouraging another person to perpetrate or attempt to perpetrate

66 a felony of any degree of rape, sodomy, burglary, robbery,
67 kidnapping, or any felony offense in chapter 195, RSMo;

68 (12) The murdered individual was a witness or potential
69 witness in any past or pending investigation or past or pending
70 prosecution, and was killed as a result of his status as a witness or
71 potential witness;

72 (13) The murdered individual was an employee of an
73 institution or facility of the department of corrections of this state
74 or local correction agency and was killed in the course of
75 performing his official duties, or the murdered individual was an
76 inmate of such institution or facility;

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

80 (15) The murder was committed for the purpose of
81 concealing or attempting to conceal any felony offense defined in
82 chapter 195, RSMo;

83 (16) The murder was committed for the purpose of causing
84 or attempting to cause a person to refrain from initiating or aiding
85 in the prosecution of a felony offense defined in chapter 195, RSMo;

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

89 3. Statutory mitigating circumstances shall include the
90 following:

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

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

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

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

101 (5) The defendant acted under extreme duress or under the

102 substantial domination of another person;

103 (6) The capacity of the defendant to appreciate the
104 criminality of his conduct or to conform his conduct to the
105 requirements of law was substantially impaired;

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

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

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

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

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

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

23 (3) Whether the sentence of death is excessive or
24 disproportionate to the penalty imposed in similar cases,
25 considering both the crime, the strength of the evidence and the
26 defendant.

27 4. Both the defendant and the state shall have the right to
28 submit briefs within the time provided by the supreme court, and
29 to present oral argument to the supreme court.

30 5. The supreme court shall include in its decision a
31 reference to those similar cases which it took into consideration. In

32 addition to its authority regarding correction of errors, the supreme
33 court, with regard to review of death sentences, shall be authorized
34 to:

- 35 (1) Affirm the sentence of death; or
36 (2) Set the sentence aside and resentence the defendant to
37 life imprisonment without eligibility for probation, parole, or
38 release except by act of the governor; or
39 (3) Set the sentence aside and remand the case for retrial
40 of the punishment hearing. A new jury shall be selected or a jury
41 may be waived by agreement of both parties and then the
42 punishment trial shall proceed in accordance with this chapter,
43 with the exception that the evidence of the guilty verdict shall be
44 admissible in the new trial together with the official transcript of
45 any testimony and evidence properly admitted in each stage of the
46 original trial where relevant to determine punishment.

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

64 7. In addition to the mandatory sentence review, there shall
65 be a right of direct appeal of the conviction to the supreme court of
66 Missouri. This right of appeal may be waived by the defendant. If
67 an appeal is taken, the appeal and the sentence review shall be

68 consolidated for consideration. The court shall render its decision
69 on legal errors enumerated, the factual substantiation of the
70 verdict, and the validity of the sentence.]

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