

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NOS. 1756 & 1925**  
**100TH GENERAL ASSEMBLY**

4339H.02C

DANA RADEMAN MILLER, Chief Clerk

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**AN ACT**

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

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

Section A. Sections 565.020 and 565.030, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 565.020, 565.028, and 565.030, to read as follows:

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

2. The offense of murder in the first degree is a class A felony, and, if a person is eighteen years of age or older at the time of the offense, 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, a person who raises the matter of having suffered from a serious mental illness at the time of the commission of the offense and is found to have suffered from a serious mental illness at the time of the commission of the offense under section 565.028 shall be ineligible for a sentence of death due to a serious mental illness.** If a person has not reached his or her eighteenth birthday at the time of the commission of the offense, the punishment shall be as provided under section 565.033.

**565.028. 1. (1) Subject to subdivision (2) of this subsection, a defendant has a serious mental illness if the following apply:**

**(a) The defendant has been diagnosed as described in paragraph (b) of this subdivision with one or more of the following conditions:**

**a. Schizophrenia;**

**b. Schizoaffective disorder;**

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.

- 7           **c. Bipolar disorder, with psychotic features;**  
8           **d. Major depressive disorder, with psychotic features;**  
9           **e. Delusional disorders;**  
10          **f. Traumatic brain injury; or**  
11          **g. Posttraumatic stress disorder (PTSD); and**  
12          **(b) At the time of the commission of the offense, the condition or conditions**  
13 **described in paragraph (a) of this subdivision with which the defendant has been**  
14 **diagnosed, while not meeting the standard to be found not guilty by reason of mental**  
15 **disease or defect under section 552.030, the standard to be found incompetent to stand trial**  
16 **as described in section 552.020, or the standard for mental disease or defect under**  
17 **subdivision (8) of subsection 2 of section 552.015, nevertheless significantly impaired the**  
18 **defendant's capacity to do one or more of the following:**  
19           **a. Exercise rational judgment in relation to the defendant's conduct;**  
20           **b. Conform the defendant's conduct to the requirements of law; or**  
21           **c. Appreciate the nature, consequences, or wrongfulness of the defendant's conduct.**  
22          **(2) A disorder manifested primarily by repeated criminal conduct or attributable**  
23 **solely to the acute effects of voluntary use of alcohol or any other drug of abuse does not,**  
24 **solely alone, constitute a serious mental illness for purposes of this section.**  
25          **(3) Evidence to show the existence of a serious mental illness may include, but is not**  
26 **limited to, the following:**  
27           **(a) Existence of active psychosis;**  
28           **(b) Delusions;**  
29           **(c) Hallucinations;**  
30           **(d) Disorganized or irrational thinking;**  
31           **(e) Erroneous perceptions of reality;**  
32           **(f) Mania;**  
33           **(g) Significant disruptions of consciousness and memory;**  
34           **(h) Grossly disorganized or abnormal motor behavior, including catatonia; or**  
35           **(i) Any other evidence relevant to show the conditions described under paragraphs**  
36 **(a) and (b) of subdivision (1) of this section.**  
37          **2. The diagnosis of a defendant with a condition or conditions described in**  
38 **paragraph (a) of subdivision (1) of subsection 1 of this section may be made at any time**  
39 **prior to, on, or after the date of the commission of the offense or the day on which the**  
40 **defendant raises the matter of having suffered from a serious mental illness at the time of**  
41 **the commission of the offense under subsection 3 of this section. Diagnosis of the condition**  
42 **or conditions after the date of the commission of the offense does not preclude the**

43 defendant from presenting evidence that the defendant had a serious mental illness at the  
44 time of the commission of the offense or, in the circumstances described in subsection 3, 4,  
45 5, or 6 of this section, from having the benefit of the rebuttable presumption described in  
46 such subsections.

47 3. A defendant charged with murder in the first degree may raise the issue of a  
48 serious mental illness at the time of the commission of the offense to exempt himself or  
49 herself from eligibility for a sentence of death.

50 4. (1) If the defense raises the matter of the defendant's serious mental illness at  
51 the time of the commission of the offense, the court shall, at the request of the state or the  
52 defense, order an evaluation of the defendant in accordance with the provisions of this  
53 section.

54 (2) The state shall not use any evidence against the defendant acquired as a result  
55 of any evaluation ordered under this section or call any examiner who performed such an  
56 evaluation on the defendant as a witness against the defendant unless and until the defense  
57 presents such evidence at a hearing on the matter of the defendant's serious mental illness  
58 at the time of the commission of the offense. The state may then call the examiner and use  
59 the information the examiner obtained at the hearing on this issue.

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

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

67 5. If a defendant raises the matter of having suffered from a serious mental illness  
68 at the time of the commission of the offense and submits prima facie evidence that he or she  
69 has a serious mental illness as described in paragraph (a) of subdivision (1) of subsection  
70 1 of this section and that the condition existed at the time of the commission of the offense,  
71 the prosecution shall have an opportunity to present evidence to contest the serious mental  
72 illness or to rebut the presumption that the condition, if present, significantly impaired the  
73 defendant's capacity at the time of the commission of the offense in a manner described in  
74 subparagraph a., b., or c. of paragraph (b) of subdivision (1) of subsection 1 of this section.  
75 The prosecution shall have the burden of proving, beyond a reasonable doubt, that the  
76 serious mental illness did not exist at the time of the commission of the offense or, if  
77 present, to establish beyond a reasonable doubt that the serious mental illness did not  
78 significantly impair the defendant's capacity at the time of the commission of the offense

79 in a manner described in subparagraph a., b., or c. of paragraph (b) of subdivision (1) of  
80 subsection 1 of this section.

81 6. (1) If a defendant raises the matter of having suffered from a serious mental  
82 illness at the time of the commission of the offense, and the state contests the application  
83 of the exemption based on the information the defense provides, the defense shall be  
84 entitled to a pretrial hearing and determination on eligibility for the exemption.

85 (2) If the defense raises the matter, the defense shall be entitled to a hearing on the  
86 issues that would exempt the defendant from eligibility for a sentence of death under this  
87 section. The determination of eligibility for the exemption shall be made pretrial by the  
88 court.

89 (3) At such a hearing, the defense shall produce evidence, from any source, to  
90 establish a prima facie case that the defendant suffered from a serious mental illness, as  
91 described in paragraph (a) of subdivision (1) of subsection 1 of this section. If the defense  
92 submits prima facie evidence that the defendant had a serious mental illness at the time of  
93 the commission of the offense, it shall be rebuttably presumed that the condition  
94 significantly impaired the defendant's capacity at the time of the commission of the offense  
95 in a manner described in subparagraph a., b., or c. of paragraph (b) of subdivision (1) of  
96 subsection 1 of this section.

97 (4) The state may then present evidence to rebut the presumption and establish,  
98 beyond a reasonable doubt, that the defendant did not suffer from a serious mental illness  
99 at the time of the commission of the offense or that the serious mental illness, if present, did  
100 not substantially impair the capacity of the defendant at the time of the commission of the  
101 offense in a manner described in subparagraph a., b., or c. of paragraph (b) of subdivision  
102 (1) of subsection 1 of this section.

103 (5) If the court finds that the state has failed to rebut the presumption; or the state  
104 failed to present evidence to prove, beyond a reasonable doubt, that the defendant did not  
105 have a serious mental illness; or the state failed to prove that the serious mental illness, if  
106 present, did not substantially impair the defendant's capacity at the time of the commission  
107 of the offense, the court shall find that the exemption applies and direct judgment on the  
108 matter of the exemption in favor of the defendant.

109 (6) If the defense elects to have the court take up the issue of the defendant's serious  
110 mental illness before the trial, and a determination is made that the exemption does not  
111 apply, it shall not prejudice the defendant's right to have the issue submitted to the trier  
112 of fact in the sentencing phase of the trial following a finding of guilt on the charge of  
113 murder in the first degree in a case in which the death penalty was not waived.

114           **7. A defendant's pleading of not guilty due to mental disease or defect or incapacity**  
115 **to stand trial, or a finding after such a plea that the defendant does not suffer from mental**  
116 **disease or defect or has capacity to stand trial shall not preclude the defendant from**  
117 **raising the matter of the defendant's serious mental illness at the time of the commission**  
118 **of the offense under this section and, if a defendant so raises that matter, shall not limit or**  
119 **affect any of the procedures described in this section or the authority of a court to make**  
120 **any finding described in this section.**

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

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

12           3. If murder in the first degree is submitted and the death penalty was not waived but the  
13 trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed as  
14 in all other criminal cases. The attorneys may then argue as in other criminal cases the issue of  
15 punishment, after which the trier shall assess and declare the punishment as in all other criminal  
16 cases.

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

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

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

33 (3) If the trier concludes that there is evidence in mitigation of punishment, including  
34 but not limited to evidence supporting the statutory mitigating circumstances listed in subsection  
35 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment  
36 found by the trier; or

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

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40 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set out  
41 in writing the aggravating circumstance or circumstances listed in subsection 2 of section  
42 565.032 which it found beyond a reasonable doubt. If the trier is a jury, it shall be instructed  
43 before the case is submitted that if it is unable to decide or agree upon the punishment the court  
44 shall assess and declare the punishment at life imprisonment without eligibility for probation,  
45 parole, or release except by act of the governor ~~[or death]~~. The court shall follow the same  
46 procedure as set out in this section whenever it is required to determine punishment for murder  
47 in the first degree.

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

52 6. As used in this section, the terms "intellectual disability" or "intellectually disabled"  
53 refer to a condition involving substantial limitations in general functioning characterized by  
54 significantly subaverage intellectual functioning with continual extensive related deficits and  
55 limitations in two or more adaptive behaviors such as communication, self-care, home living,  
56 social skills, community use, self-direction, health and safety, functional academics, leisure and  
57 work, which conditions are manifested and documented before eighteen years of age.

58 7. The provisions of this section shall only govern offenses committed on or after August  
59 28, 2001.

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