

SECOND REGULAR SESSION

SENATE BILL NO. 1030

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WILLIAMS

Read 1st time February 20, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5381S.011

AN ACT

To repeal section 565.020, RSMo, and to enact in lieu thereof two new sections relating to murder in the first degree, with penalty provisions.

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

Section A. Section 565.020, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 565.020 and 565.028, to read as follows: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. 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; **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.**

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;

- 6 **b. Schizoaffective disorder;**
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**
13 **conditions described in paragraph (a) of this subdivision with which**
14 **the defendant has been diagnosed, while not meeting the standard to**
15 **be found not guilty by reason of mental disease or defect under section**
16 **552.030, the standard to be found incompetent to stand trial as**
17 **described in section 552.020, or the standard for mental disease or**
18 **defect under subdivision (8) of subsection 2 of section 552.015,**
19 **nevertheless significantly impaired the defendant's capacity to do one**
20 **or more of the following:**
- 21 **a. Exercise rational judgment in relation to the defendant's**
22 **conduct;**
23 **b. Conform the defendant's conduct to the requirements of law;**
24 **or**
25 **c. Appreciate the nature, consequences, or wrongfulness of the**
26 **defendant's conduct.**
- 27 **(2) A disorder manifested primarily by repeated criminal**
28 **conduct or attributable solely to the acute effects of voluntary use of**
29 **alcohol or any other drug of abuse does not, solely alone, constitute a**
30 **serious mental illness for purposes of this section.**
- 31 **(3) Evidence to show the existence of a serious mental illness**
32 **may include, but is not limited to, the following:**
- 33 **(a) Existence of active psychosis;**
34 **(b) Delusions;**
35 **(c) Hallucinations;**
36 **(d) Disorganized or irrational thinking;**
37 **(e) Erroneous perceptions of reality;**
38 **(f) Mania;**
39 **(g) Significant disruptions of consciousness and memory;**
40 **(h) Grossly disorganized or abnormal motor behavior, including**
41 **catatonia; or**
42 **(i) Any other evidence relevant to show the conditions described**

43 under paragraphs (a) and (b) of subdivision (1) of this section.

44 2. The diagnosis of a defendant with a condition or conditions
45 described in paragraph (a) of subdivision (1) of subsection 1 of this
46 section may be made at any time prior to, on, or after the date of the
47 commission of the offense. Diagnosis of the condition or conditions
48 after the date of the commission of the offense does not preclude the
49 defendant from presenting evidence that the defendant had a serious
50 mental illness at the time of the commission of the offense or, in the
51 circumstances described in subsection 3, 4, 5, or 6 of this section, from
52 having the benefit of the rebuttable presumption described in such
53 subsections.

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

58 4. (1) If the defense raises the matter of the defendant's serious
59 mental illness at the time of the commission of the offense, the court
60 shall, at the request of the prosecuting attorney or the defense, order
61 an evaluation of the defendant in accordance with the provisions of
62 this section.

63 (2) The prosecuting attorney shall not use any evidence against
64 the defendant acquired as a result of any evaluation ordered under this
65 section or call any examiner who performed such an evaluation on the
66 defendant as a witness against the defendant unless and until the
67 defense presents such evidence at a hearing on the matter of the
68 defendant's serious mental illness at the time of the commission of the
69 offense. The prosecuting attorney may then call the examiner and use
70 the information the examiner obtained at the hearing on this issue.

71 (3) Neither the appointment nor the testimony of an examiner in
72 an evaluation ordered under this section shall preclude the prosecuting
73 attorney or defense from calling other witnesses or presenting other
74 evidence on the issue of the defendant's serious mental illness.

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

80 5. If a defendant raises the matter of having suffered from a
81 serious mental illness at the time of the commission of the offense and
82 submits prima facie evidence that he or she has a serious mental illness
83 as described in paragraph (a) of subdivision (1) of subsection 1 of this
84 section and that the condition existed at the time of the commission of
85 the offense, the prosecuting attorney shall have an opportunity to
86 present evidence to contest the serious mental illness or to rebut the
87 presumption that the condition, if present, significantly impaired the
88 defendant's capacity at the time of the commission of the offense in a
89 manner described in subparagraph a., b., or c. of paragraph (b) of
90 subdivision (1) of subsection 1 of this section. The prosecuting attorney
91 shall have the burden of proving, beyond a reasonable doubt, that the
92 serious mental illness did not exist at the time of the commission of the
93 offense or, if present, to establish beyond a reasonable doubt that the
94 serious mental illness did not significantly impair the defendant's
95 capacity at the time of the commission of the offense in a manner
96 described in subparagraph a., b., or c. of paragraph (b) of subdivision
97 (1) of subsection 1 of this section.

98 6. (1) If a defendant raises the matter of having suffered from a
99 serious mental illness at the time of the commission of the offense, and
100 the prosecuting attorney contests the application of the exemption
101 based on the information the defense provides, the defense shall be
102 entitled to a pretrial hearing and determination on eligibility for the
103 exemption.

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

109 (3) At such a hearing, the defense shall produce evidence, from
110 any source, to establish a prima facie case that the defendant suffered
111 from a serious mental illness, as described in paragraph (a) of
112 subdivision (1) of subsection 1 of this section. If the defense submits
113 prima facie evidence that the defendant had a serious mental illness at
114 the time of the commission of the offense, it shall be rebuttably
115 presumed that the condition significantly impaired the defendant's
116 capacity at the time of the commission of the offense in a manner

117 described in subparagraph a., b., or c. of paragraph (b) of subdivision
118 (1) of subsection 1 of this section.

119 (4) The prosecuting attorney may then present evidence to rebut
120 the presumption and establish, beyond a reasonable doubt, that the
121 defendant did not suffer from a serious mental illness at the time of the
122 commission of the offense or that the serious mental illness, if present,
123 did not substantially impair the capacity of the defendant at the time
124 of the commission of the offense in a manner described in
125 subparagraph a., b., or c. of paragraph (b) of subdivision (1) of
126 subsection 1 of this section.

127 (5) If the court finds that the prosecuting attorney has failed to
128 rebut the presumption; or the prosecuting attorney failed to present
129 evidence to prove, beyond a reasonable doubt, that the defendant did
130 not have a serious mental illness; or the prosecuting attorney failed to
131 prove that the serious mental illness, if present, did not substantially
132 impair the defendant's capacity at the time of the commission of the
133 offense, the court shall find that the exemption applies and direct
134 judgment on the matter of the exemption in favor of the defendant.

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

142 7. A defendant's pleading of not guilty due to mental disease or
143 defect or incapacity to stand trial, or a finding after such a plea that
144 the defendant does not suffer from mental disease or defect or has
145 capacity to stand trial shall not preclude the defendant from raising
146 the matter of the defendant's serious mental illness at the time of the
147 commission of the offense under this section and, if a defendant so
148 raises that matter, shall not limit or affect any of the procedures
149 described in this section or the authority of a court to make any finding
150 described in this section.