

SECOND REGULAR SESSION

HOUSE BILL NO. 1986

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GARDNER (Sponsor), HUBBARD, SMITH,
MORGAN AND MCNEIL (Co-sponsors).

5785L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 556.061 and 565.020, RSMo, and to enact in lieu thereof three new sections relating to first degree murder, with penalty provisions and an emergency clause.

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

Section A. Sections 556.061 and 565.020, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 556.061, 565.020, and 565.033, to read as follows:

556.061. In this code, unless the context requires a different definition, the following shall apply:

- (1) "Affirmative defense" has the meaning specified in section 556.056;
- (2) "Burden of injecting the issue" has the meaning specified in section 556.051;
- (3) "Commercial film and photographic print processor", any person who develops exposed photographic film into negatives, slides or prints, or who makes prints from negatives or slides, for compensation. The term commercial film and photographic print processor shall include all employees of such persons but shall not include a person who develops film or makes prints for a public agency;
- (4) "Confinement":
 - (a) A person is in confinement when such person is held in a place of confinement pursuant to arrest or order of a court, and remains in confinement until:
 - a. A court orders the person's release; or
 - b. The person is released on bail, bond, or recognizance, personal or otherwise; or

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.

15 c. A public servant having the legal power and duty to confine the person authorizes his
16 release without guard and without condition that he return to confinement;

17 (b) A person is not in confinement if:

18 a. The person is on probation or parole, temporary or otherwise; or

19 b. The person is under sentence to serve a term of confinement which is not continuous,
20 or is serving a sentence under a work-release program, and in either such case is not being held
21 in a place of confinement or is not being held under guard by a person having the legal power
22 and duty to transport the person to or from a place of confinement;

23 (5) "Consent": consent or lack of consent may be expressed or implied. Assent does not
24 constitute consent if:

25 (a) It is given by a person who lacks the mental capacity to authorize the conduct charged
26 to constitute the offense and such mental incapacity is manifest or known to the actor; or

27 (b) It is given by a person who by reason of youth, mental disease or defect, intoxication,
28 a drug-induced state, or any other reason is manifestly unable or known by the actor to be unable
29 to make a reasonable judgment as to the nature or harmfulness of the conduct charged to
30 constitute the offense; or

31 (c) It is induced by force, duress or deception;

32 (6) "Criminal negligence" has the meaning specified in section 562.016;

33 (7) "Custody", a person is in custody when the person has been arrested but has not been
34 delivered to a place of confinement;

35 (8) "Dangerous felony" means the felonies of **murder in the first degree**, arson in the
36 first degree, assault in the first degree, attempted rape in the first degree if physical injury results,
37 attempted forcible rape if physical injury results, attempted sodomy in the first degree if physical
38 injury results, attempted forcible sodomy if physical injury results, rape in the first degree,
39 forcible rape, sodomy in the first degree, forcible sodomy, kidnapping, murder in the second
40 degree, assault of a law enforcement officer in the first degree, domestic assault in the first
41 degree, elder abuse in the first degree, robbery in the first degree, statutory rape in the first degree
42 when the victim is a child less than twelve years of age at the time of the commission of the act
43 giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than
44 twelve years of age at the time of the commission of the act giving rise to the offense, and, abuse
45 of a child if the child dies as a result of injuries sustained from conduct chargeable under section
46 568.060, child kidnapping, and parental kidnapping committed by detaining or concealing the
47 whereabouts of the child for not less than one hundred twenty days under section 565.153;

48 (9) "Dangerous instrument" means any instrument, article or substance, which, under the
49 circumstances in which it is used, is readily capable of causing death or other serious physical
50 injury;

- 51 (10) "Deadly weapon" means any firearm, loaded or unloaded, or any weapon from
52 which a shot, readily capable of producing death or serious physical injury, may be discharged,
53 or a switchblade knife, dagger, billy **club**, blackjack or metal knuckles;
- 54 (11) "Felony" has the meaning specified in section 556.016;
- 55 (12) "Forcible compulsion" means either:
- 56 (a) Physical force that overcomes reasonable resistance; or
- 57 (b) A threat, express or implied, that places a person in reasonable fear of death, serious
58 physical injury or kidnapping of such person or another person;
- 59 (13) "Incapacitated" means that physical or mental condition, temporary or permanent,
60 in which a person is unconscious, unable to appraise the nature of such person's conduct, or
61 unable to communicate unwillingness to an act;
- 62 (14) "Infraction" has the meaning specified in section 556.021;
- 63 (15) "Inhabitable structure" has the meaning specified in section 569.010;
- 64 (16) "Knowingly" has the meaning specified in section 562.016;
- 65 (17) "Law enforcement officer" means any public servant having both the power and
66 duty to make arrests for violations of the laws of this state, and federal law enforcement officers
67 authorized to carry firearms and to make arrests for violations of the laws of the United States;
- 68 (18) "Misdemeanor" has the meaning specified in section 556.016;
- 69 (19) "Offense" means any felony, misdemeanor or infraction;
- 70 (20) "Physical injury" means physical pain, illness, or any impairment of physical
71 condition;
- 72 (21) "Place of confinement" means any building or facility and the grounds thereof
73 wherein a court is legally authorized to order that a person charged with or convicted of a crime
74 be held;
- 75 (22) "Possess" or "possessed" means having actual or constructive possession of an
76 object with knowledge of its presence. A person has actual possession if such person has the
77 object on his or her person or within easy reach and convenient control. A person has
78 constructive possession if such person has the power and the intention at a given time to exercise
79 dominion or control over the object either directly or through another person or persons.
80 Possession may also be sole or joint. If one person alone has possession of an object, possession
81 is sole. If two or more persons share possession of an object, possession is joint;
- 82 (23) "Public servant" means any person employed in any way by a government of this
83 state who is compensated by the government by reason of such person's employment, any person
84 appointed to a position with any government of this state, or any person elected to a position with
85 any government of this state. It includes, but is not limited to, legislators, jurors, members of the
86 judiciary and law enforcement officers. It does not include witnesses;

87 (24) "Purposely" has the meaning specified in section 562.016;

88 (25) "Recklessly" has the meaning specified in section 562.016;

89 (26) "Ritual" or "ceremony" means an act or series of acts performed by two or more
90 persons as part of an established or prescribed pattern of activity;

91 (27) "Serious emotional injury", an injury that creates a substantial risk of temporary or
92 permanent medical or psychological damage, manifested by impairment of a behavioral,
93 cognitive or physical condition. Serious emotional injury shall be established by testimony of
94 qualified experts upon the reasonable expectation of probable harm to a reasonable degree of
95 medical or psychological certainty;

96 (28) "Serious physical injury" means physical injury that creates a substantial risk of
97 death or that causes serious disfigurement or protracted loss or impairment of the function of any
98 part of the body;

99 (29) "Sexual conduct" means acts of human masturbation; deviate sexual intercourse;
100 sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area,
101 buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification;

102 (30) "Sexual contact" means any touching of the genitals or anus of any person, or the
103 breast of any female person, or any such touching through the clothing, for the purpose of
104 arousing or gratifying sexual desire of any person;

105 (31) "Sexual performance", any performance, or part thereof, which includes sexual
106 conduct by a child who is less than seventeen years of age;

107 (32) "Voluntary act" has the meaning specified in section 562.011.

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

3 2. **The offense of** murder in the first degree is a class A felony, and, **if a person is**
4 **eighteen years of age or older at the time of the offense**, the punishment shall be either death
5 or imprisonment for life without eligibility for probation or parole, or release except by act of
6 the governor; except that, if a person has not reached his [sixteenth] **or her eighteenth** birthday
7 at the time of the commission of the [crime] **offense**, the punishment shall be [imprisonment for
8 life without eligibility for probation or parole, or release except by act of the governor] **as**
9 **provided under section 565.033.**

565.033. 1. A person found guilty of murder in the first degree who was under the
2 **age of eighteen at the time of the commission of the offense shall be sentenced as follows:**

3 (1) **A person who at the time of the commission of the offense was sixteen years of**
4 **age or older shall be sentenced to a term of imprisonment for life without eligibility for**
5 **probation, parole, or release, or a term of imprisonment, the minimum of which shall be**
6 **at least thirty-five years; and**

7 (2) A person who at the time of the commission of the offense was under sixteen
8 years of age shall be sentenced to a term of imprisonment for life without eligibility for
9 probation, parole, or release, or a term of imprisonment, the minimum of which shall be
10 at least twenty-five years.

11 2. If the prosecuting or circuit attorney intends to seek a punishment of
12 imprisonment for life without eligibility for probation, parole, or release, the prosecuting
13 or circuit attorney shall file a notice of such intent after conviction and before sentencing.

14 3. In determining whether to impose a sentence of life without eligibility for
15 probation, parole, or conditional release, the trier shall consider and make findings on the
16 record regarding the following:

17 (1) The impact of the offense on each victim, including oral and written victim
18 impact statements made or submitted by family members of the victim detailing the
19 physical, psychological, and economic effects of the offense on the victim and the victim's
20 family. A victim impact statement may include comment on the sentence of the defendant;

21 (2) The impact of the offense on the community;

22 (3) The threat to the safety of the public or any individual posed by the defendant;

23 (4) The nature and circumstances of the offense committed by the defendant;

24 (5) The degree of the defendant's culpability;

25 (6) The history and character of the defendant; and

26 (7) Age-related characteristics of the defendant, including:

27 (a) Age;

28 (b) Mental capacity;

29 (c) Maturity;

30 (d) The degree of criminal sophistication exhibited by the defendant;

31 (e) The nature and extent of any prior delinquent or criminal history, including the
32 success or failure of any previous attempts by the court to rehabilitate the defendant;

33 (f) Probation or institutional reports; and

34 (g) Other relevant factors.

35 4. Any person sentenced under section 565.020 to imprisonment for life without
36 eligibility for probation, parole, or release before the effective date of this section for an
37 offense committed when the person was less than eighteen years of age whose case is not
38 final for purposes of appeal as of the effective date of this section may, within six months
39 of the effective date of this section, file a motion with the sentencing court for a hearing to
40 review the person's sentence for murder in the first degree. If the person pleaded guilty
41 or waived the right to a jury trial when the person was originally sentenced, the sentencing
42 hearing shall be heard by a judge. If a jury sentenced the person, a new jury shall be

43 selected or a jury may be waived by agreement of both parties. The sole purpose of the
44 sentencing hearing shall be to determine if the sentence of imprisonment for life without
45 eligibility for probation, parole, or conditional release shall remain or be amended in
46 accordance with this section.

47 **5. The procedures provided under this section shall not apply to any case that is**
48 **final for purposes of appeal as of the effective date of this section.**

49 **6. A case is final for purposes of appeal:**

50 **(1) When the time for filing an appeal in the Missouri court of appeals has expired;**

51 **(2) If an appeal was filed in the Missouri court of appeals, when the time for filing**
52 **an application for transfer in the Missouri supreme court has expired;**

53 **(3) If an application was filed for transfer to the Missouri supreme court, when the**
54 **application for transfer was denied or when a timely filed motion for rehearing was**
55 **denied; or**

56 **(4) If the Missouri supreme court granted transfer, when the Missouri supreme**
57 **court rendered its decision or when a timely filed motion for rehearing was denied.**

Section B. Because of the need to adopt a punishment scheme for first degree murderers
2 of a certain age after the United States Supreme Court declared as unconstitutional the only
3 punishment available under Missouri law for such offenders, this act is deemed necessary for the
4 immediate preservation of the public health, welfare, peace and safety, and is hereby declared
5 to be an emergency act within the meaning of the constitution, this act shall be in full force and
6 effect upon its passage and approval.

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