

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for House Bill No. 57, Page 1, Section 557.035, Line 13,
2 by inserting immediately after said line the following:

3
4 "565.004. 1. Each homicide offense which is lawfully joined in the same indictment or
5 information together with any homicide offense or offense other than a homicide shall be charged
6 together with such offense in separate counts. A count charging any offense of homicide may only
7 be charged and tried together with one or more counts of any other homicide or offense other than a
8 homicide as provided in subsection 2 of section 545.140. Except as provided in subsections 2[;] and
9 3[; and 4] of this section, no murder in the first degree offense may be tried together with any
10 offense other than murder in the first degree. In the event of a joinder of homicide offenses, all
11 offenses charged which are supported by the evidence in the case, together with all proper lesser
12 offenses under section 565.029, shall, when requested by one of the parties or the court, be
13 submitted to the jury or, in a jury-waived trial, considered by the judge.

14 2. A count charging any offense of homicide of a particular individual may be joined in an
15 indictment or information and tried with one or more counts charging alternatively any other
16 homicide or offense other than a homicide committed against that individual. The state shall not be
17 required to make an 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 under subsection 1
19 of this section, either separate offenses other than murder in the first degree or separate offenses of
20 murder in the first degree committed against different individuals.

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

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

31 565.006. 1. At any time before the commencement of the trial of a homicide offense, the
32 defendant may, with the assent of the court, waive a trial by jury and agree to submit all issues in the
33 case to the court, whose finding shall have the force and effect of a verdict of a jury. Such a waiver
34 must include a waiver of a trial by jury of all issues and offenses charged in the case, including the
35 punishment to be assessed and imposed if the defendant is found guilty.

36 2. No defendant who pleads guilty to a homicide offense or who is found guilty of a

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1 homicide offense after trial to the court without a jury shall be permitted a trial by jury on the issue
2 of the punishment to be imposed, except by agreement of the state.

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

6 ~~———4.] Any waiver of a jury trial and agreement permitted by this section shall be entered in the~~
7 ~~court record.~~

8 565.020. 1. A person commits the offense of murder in the first degree if ~~[he or she]~~ such
9 person knowingly causes the death of another person after deliberation upon the matter. 2. The
10 offense of murder in the first degree is a class A felony, and, if a person is eighteen years of age or
11 older at the time of the offense, the punishment shall be ~~[either death or]~~ imprisonment for life
12 without eligibility for probation or parole, or release except by act of the governor. If a person has
13 not reached his or her eighteenth birthday at the time of the commission of the offense, the
14 punishment shall be as provided under section 565.033."; and

15
16 Further amend said bill, Page 2, Section 565.027, Line 5, by inserting immediately after said line
17 the following:

18
19 "565.040. ~~[1. In the event that the death penalty provided in this chapter is held to be~~
20 ~~unconstitutional,]~~ Any person convicted of murder in the first degree ~~[shall be]~~ and sentenced by the
21 court to death prior to August 28, 2017, shall be sentenced by the court to life imprisonment without
22 eligibility for probation, parole, or release except by act of the governor~~[- with the exception that~~
23 ~~when a specific aggravating circumstance found in a case is held to be unconstitutional or invalid~~
24 ~~for another reason, the supreme court of Missouri is further authorized to remand the case for~~
25 ~~resentencing or retrial of the punishment pursuant to subsection 5 of section 565.035.~~

26 ~~———2. In the event that any death sentence imposed pursuant to this chapter is held to be~~
27 ~~unconstitutional, the trial court which previously sentenced the defendant to death shall cause the~~
28 ~~defendant to be brought before the court and shall sentence the defendant to life imprisonment~~
29 ~~without eligibility for probation, parole, or release except by act of the governor, with the exception~~
30 ~~that when a specific aggravating circumstance found in a case is held to be inapplicable,~~
31 ~~unconstitutional or invalid for another reason, the supreme court of Missouri is further authorized to~~
32 ~~remand the case for retrial of the punishment pursuant to subsection 5 of section 565.035]."; and~~

33
34 Further amend said bill, Page 8, Section 574.050, Line 7, by inserting immediately after said line
35 the following:

36
37 ~~[546.680. When judgment of death is rendered by any court of competent~~
38 ~~jurisdiction, a warrant signed by the judge and attested by the clerk under the~~
39 ~~seal of the court must be drawn and delivered to the sheriff. It must state the~~
40 ~~conviction and judgment and appoint a day on which the judgment must be~~
41 ~~executed, which must not be less than thirty nor more than sixty days from~~
42 ~~the date of judgment, and must direct the sheriff to deliver the defendant, at a~~
43 ~~time specified in said order, not more than ten days from the date of~~
44 ~~judgment, to the chief administrative officer of a correctional facility of the~~
45 ~~department of corrections, for execution.]~~

46
47 ~~[546.690. The judge of a court at which a conviction is had must,~~
48 ~~immediately after the conviction, transmit to the governor of the state, by~~

1 mail or otherwise, a statement of the conviction and judgment.]

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

10
11 [546.710. Upon such convicted offender being brought before the
12 court, they shall proceed to inquire into the facts, and if no legal reasons exist
13 against the execution of sentence, such court shall issue a warrant to the
14 director of the department of corrections, for the execution of the prisoner at
15 the time therein specified, which execution shall be obeyed by the director
16 accordingly.]

17
18 [546.720. 1. The manner of inflicting the punishment of death shall
19 be by the administration of lethal gas or by means of the administration of
20 lethal injection. And for such purpose the director of the department of
21 corrections is hereby authorized and directed to provide a suitable and
22 efficient room or place, enclosed from public view, within the walls of a
23 correctional facility of the department of corrections, and the necessary
24 appliances for carrying into execution the death penalty by means of the
25 administration of lethal gas or by means of the administration of lethal
26 injection.

27 2. The director of the department of corrections shall select an
28 execution team which shall consist of those persons who administer lethal gas
29 or lethal chemicals and those persons, such as medical personnel, who
30 provide direct support for the administration of lethal gas or lethal chemicals.
31 The identities of members of the execution team, as defined in the execution
32 protocol of the department of corrections, shall be kept confidential.
33 Notwithstanding any provision of law to the contrary, any portion of a record
34 that could identify a person as being a current or former member of an
35 execution team shall be privileged and shall not be subject to discovery,
36 subpoena, or other means of legal compulsion for disclosure to any person or
37 entity, the remainder of such record shall not be privileged or closed unless
38 protected from disclosure by law. The section of an execution protocol that
39 directly relates to the administration of lethal gas or lethal chemicals is an
40 open record, the remainder of any execution protocol of the department of
41 corrections is a closed record.

42 3. A person may not, without the approval of the director of the
43 department of corrections, knowingly disclose the identity of a current or
44 former member of an execution team or disclose a record knowing that it
45 could identify a person as being a current or former member of an execution
46 team. Any person whose identity is disclosed in violation of this section
47 shall:

48 (1) Have a civil cause of action against a person who violates this

1 section;

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

3 (a) ~~Actual damages; and~~

4 (b) ~~Punitive damages on a showing of a willful violation of this~~

5 section.

6 4. ~~Notwithstanding any provision of law to the contrary, if a member~~
 7 ~~of the execution team is licensed by a board or department, the licensing~~
 8 ~~board or department shall not censure, reprimand, suspend, revoke, or take~~
 9 ~~any other disciplinary action against the person's license because of his or her~~
 10 ~~participation in a lawful execution. All members of the execution team are~~
 11 ~~entitled to coverage under the state legal expense fund established by section~~
 12 ~~105.711 for conduct of such execution team member arising out of and~~
 13 ~~performed in connection with his or her official duties on behalf of the state~~
 14 ~~or any agency of the state, provided that moneys in this fund shall not be~~
 15 ~~available for payment of claims under chapter 287.]~~

16
 17 [546.730. ~~A judgment of death must be executed within a~~
 18 ~~correctional center of the department of corrections; and such execution shall~~
 19 ~~be under the supervision and direction of the director of the department of~~
 20 ~~corrections.]~~

21
 22 [546.740. ~~The chief administrative officer of the correctional center,~~
 23 ~~or his duly appointed representative shall be present at the execution and the~~
 24 ~~director of the department of corrections shall invite the presence of the~~
 25 ~~attorney general of the state, and at least eight reputable citizens, to be~~
 26 ~~selected by him; and he shall at the request of the defendant, permit such~~
 27 ~~clergy or religious leaders, not exceeding two, as the defendant may name,~~
 28 ~~and any person, other than another incarcerated offender, relatives or friends,~~
 29 ~~not to exceed five, to be present at the execution, together with such peace~~
 30 ~~officers as he may think expedient, to witness the execution; but no person~~
 31 ~~under twenty-one years of age shall be allowed to witness the execution.]~~

32
 33 [546.750. ~~After the execution the chief administrative officer of the~~
 34 ~~correctional facility shall make a return upon the death warrant to the court by~~
 35 ~~which the judgment was rendered, showing the time, mode and manner in~~
 36 ~~which it was executed.]~~

37
 38 [546.800. ~~If, after any female convict shall be sentenced to the~~
 39 ~~punishment of death, the officer having charge of her person shall have~~
 40 ~~reason to suspect that she is pregnant, he shall in like manner summon a jury~~
 41 ~~of six persons, not less than three of whom shall be physicians, and shall give~~
 42 ~~notice thereof to the prosecuting attorney of the county where such criminal~~
 43 ~~proceedings originated, or to the circuit attorney of the city of St. Louis, if~~
 44 ~~such criminal proceedings originated in that city, who shall attend, and the~~
 45 ~~proceedings shall be had as provided.]~~

46
 47 [546.810. ~~The inquisition shall be signed by the jury and the officer~~
 48 ~~in charge of such convict, and if it appear that such female convict is pregnant~~

1 with child, her execution shall be suspended and the inquisition shall be
2 transmitted to the governor.]

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

9
10 [565.030. 1. Where murder in the first degree is charged but not
11 submitted or where the state waives the death penalty, the submission to the
12 trier and all subsequent proceedings in the case shall proceed as in all other
13 criminal cases.

14 2. Where murder in the first degree is submitted to the trier without a
15 waiver of the death penalty, the trial shall proceed in two stages before the
16 same trier. At the first stage the trier shall decide only whether the defendant
17 is guilty or not guilty of any submitted offense. The issue of punishment
18 shall not be submitted to the trier at the first stage. If an offense is charged
19 other than murder in the first degree in a count together with a count of
20 murder in the first degree, the trial judge shall assess punishment on any such
21 offense according to law, after the defendant is found guilty of such offense
22 and after he finds the defendant to be a prior offender pursuant to chapter
23 558.

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

30 4. If the trier at the first stage of a trial where the death penalty was
31 not waived finds the defendant guilty of murder in the first degree, a second
32 stage of the trial shall proceed at which the only issue shall be the punishment
33 to be assessed and declared. Evidence in aggravation and mitigation of
34 punishment, including but not limited to evidence supporting any of the
35 aggravating or mitigating circumstances listed in subsection 2 or 3 of section
36 565.032, may be presented subject to the rules of evidence at criminal trials.
37 Such evidence may include, within the discretion of the court, evidence
38 concerning the murder victim and the impact of the offense upon the family
39 of the victim and others. Rebuttal and surrebuttal evidence may be presented.
40 The state shall be the first to proceed. If the trier is a jury it shall be
41 instructed on the law. The attorneys may then argue the issue of punishment
42 to the jury, and the state shall have the right to open and close the argument.
43 The trier shall assess and declare the punishment at life imprisonment without
44 eligibility for probation, parole, or release except by act of the governor:

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

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

1 565.032; or

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

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

9
10 If the trier assesses and declares the punishment at death it shall, in its
11 findings or verdict, set out in writing the aggravating circumstance or
12 circumstances listed in subsection 2 of section 565.032 which it found beyond
13 a reasonable doubt. If the trier is a jury it shall be instructed before the case
14 is submitted that if it is unable to decide or agree upon the punishment the
15 court shall assess and declare the punishment at life imprisonment without
16 eligibility for probation, parole, or release except by act of the governor or
17 death. The court shall follow the same procedure as set out in this section
18 whenever it is required to determine punishment for murder in the first
19 degree.

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

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

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

35
36 [565.032. 1. In all cases of murder in the first degree for which the
37 death penalty is authorized, the judge in a jury-waived trial shall consider, or
38 shall include in his or her instructions to the jury for it to consider:

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

42 (2) If a statutory aggravating circumstance or circumstances is proven
43 beyond a reasonable doubt, whether the evidence as a whole justifies a
44 sentence of death or a sentence of life imprisonment without eligibility for
45 probation, parole, or release except by act of the governor.

46
47 In determining the issues enumerated in subdivisions (1) and (2) of this
48 subsection, the trier shall consider all evidence which it finds to be in

1 aggravation or mitigation of punishment, including evidence received during
2 the first stage of the trial and evidence supporting any of the statutory
3 aggravating or mitigating circumstances set out in subsections 2 and 3 of this
4 section. If the trier is a jury, it shall not be instructed upon any specific
5 evidence which may be in aggravation or mitigation of punishment, but shall
6 be instructed that each juror shall consider any evidence which he or she
7 considers to be aggravating or mitigating.

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

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

13 (2) The murder in the first degree offense was committed while the
14 offender was engaged in the commission or attempted commission of another
15 unlawful homicide;

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

20 (4) The offender committed the offense of murder in the first degree
21 for himself or herself or another, for the purpose of receiving money or any
22 other thing of monetary value from the victim of the murder or another;

23 (5) The murder in the first degree was committed against a judicial
24 officer, former judicial officer, prosecuting attorney or former prosecuting
25 attorney, circuit attorney or former circuit attorney, assistant prosecuting
26 attorney or former assistant prosecuting attorney, assistant circuit attorney or
27 former assistant circuit attorney, peace officer or former peace officer, elected
28 official or former elected official during or because of the exercise of his
29 official duty;

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

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

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

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

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

44 (11) The murder in the first degree was committed while the
45 defendant was engaged in the perpetration or was aiding or encouraging
46 another person to perpetrate or attempt to perpetrate a felony of any degree of
47 rape, sodomy, burglary, robbery, kidnapping, or any felony offense in chapter
48 195 or 579;

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

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

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

(15) The murder was committed for the purpose of concealing or attempting to conceal any felony offense defined in chapter 195 or 579;

(16) The murder was committed for the purpose of causing or attempting to cause a person to refrain from initiating or aiding in the prosecution of a felony offense defined in chapter 195 or 579;

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

3. Statutory mitigating circumstances shall include the following:

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

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

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

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

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

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

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

[565.035. 1. Whenever the death penalty is imposed in any case, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the supreme court of Missouri. The circuit clerk of the court trying the case, within ten days after receiving the transcript, shall transmit the entire record and transcript to the supreme court together with a notice prepared by the circuit clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant 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 the form of a standard questionnaire prepared and supplied by the supreme court of Missouri.

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

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

(1) Whether the sentence of death was imposed under the influence of

1 passion, prejudice, or any other arbitrary factor; and

2 (2) ~~Whether the evidence supports the jury's or judge's finding of a~~
3 ~~statutory aggravating circumstance as enumerated in subsection 2 of section~~
4 ~~565.032 and any other circumstance found;~~

5 (3) ~~Whether the sentence of death is excessive or disproportionate to~~
6 ~~the penalty imposed in similar cases, considering both the offense, the~~
7 ~~strength of the evidence and the defendant.~~

8 4. ~~Both the defendant and the state shall have the right to submit~~
9 ~~briefs within the time provided by the supreme court, and to present oral~~
10 ~~argument to the supreme court.~~

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

15 (1) ~~Affirm the sentence of death; or~~

16 (2) ~~Set the sentence aside and resentence the defendant to life~~
17 ~~imprisonment without eligibility for probation, parole, or release except by~~
18 ~~act of the governor; or~~

19 (3) ~~Set the sentence aside and remand the case for retrial of the~~
20 ~~punishment hearing. A new jury shall be selected or a jury may be waived by~~
21 ~~agreement of both parties and then the punishment trial shall proceed in~~
22 ~~accordance with this chapter, with the exception that the evidence of the~~
23 ~~guilty verdict shall be admissible in the new trial together with the official~~
24 ~~transcript of any testimony and evidence properly admitted in each stage of~~
25 ~~the original trial where relevant to determine punishment.~~

26 6. ~~There shall be an assistant to the supreme court, who shall be an~~
27 ~~attorney appointed by the supreme court and who shall serve at the pleasure~~
28 ~~of the court. The court shall accumulate the records of all cases in which the~~
29 ~~sentence of death or life imprisonment without probation or parole was~~
30 ~~imposed after May 26, 1977, or such earlier date as the court may deem~~
31 ~~appropriate. The assistant shall provide the court with whatever extracted~~
32 ~~information the court desires with respect thereto, including but not limited to~~
33 ~~a synopsis or brief of the facts in the record concerning the offense and the~~
34 ~~defendant. The court shall be authorized to employ an appropriate staff,~~
35 ~~within the limits of appropriations made for that purpose, and such methods~~
36 ~~to compile such data as are deemed by the supreme court to be appropriate~~
37 ~~and relevant to the statutory questions concerning the validity of the sentence.~~
38 ~~The office of the assistant to the supreme court shall be attached to the office~~
39 ~~of the clerk of the supreme court for administrative purposes.~~

40 7. ~~In addition to the mandatory sentence review, there shall be a right~~
41 ~~of direct appeal of the conviction to the supreme court of Missouri. This~~
42 ~~right of appeal may be waived by the defendant. If an appeal is taken, the~~
43 ~~appeal and the sentence review shall be consolidated for consideration. The~~
44 ~~court shall render its decision on legal errors enumerated, the factual~~
45 ~~substantiation of the verdict, and the validity of the sentence.] "; and~~
46

47 Further amend said bill by amending the title, enacting clause, and intersectional references
48 accordingly.