

SECOND REGULAR SESSION

HOUSE BILL NO. 1764

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DEMPSEY AND CROWELL (Co-sponsors).

Read 1st time January 31, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3504L.011

AN ACT

To repeal sections 542.276, 542.404, 547.200, 556.036, 558.041, 565.001, 565.004, 565.005, 565.006, 565.030, 565.032, 565.035, 565.040, 574.115, 575.030, and 650.055, RSMo, and to enact in lieu thereof twenty-three new sections relating to terrorism, with an expiration date and with penalty provisions and an emergency clause.

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

Section A. Sections 542.276, 542.404, 547.200, 556.036, 558.041, 565.001, 565.004, 565.005, 565.006, 565.030, 565.032, 565.035, 565.040, 574.115, 575.030, and 650.055, RSMo, are repealed and twenty-three new sections enacted in lieu thereof, to be known as sections 542.276, 542.404, 547.200, 556.036, 558.041, 565.001, 565.004, 565.005, 565.006, 565.030, 565.032, 565.035, 565.040, 574.115, 574.200, 574.205, 574.210, 574.215, 574.220, 574.225, 574.230, 575.030, and 650.055, to read as follows:

542.276. 1. Any peace officer or prosecuting attorney may make application under section 542.271 for the issuance of a search warrant.

2. **In the case of written applications for search warrants** the application shall:

(1) Be in writing;

(2) State the time and date of the making of the application;

(3) Identify the property, article, material, substance or person which is to be searched for and seized, in sufficient detail and particularity that the officer executing the warrant can readily ascertain it;

(4) Identify the person, place, or thing which is to be searched, in sufficient detail and particularity that the officer executing the warrant can readily ascertain whom or what he is to

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

11 search;

12 (5) State facts sufficient to show probable cause for the issuance of a search warrant;

13 (6) Be verified by the oath or affirmation of the applicant;

14 (7) Be filed in the proper court;

15 (8) Be signed by the prosecuting attorney of the county where the search is to take place,
16 or his designated assistant.

17 3. **In the case of written applications for search warrants** the application may be
18 supplemented by a written affidavit verified by oath or affirmation. Such affidavit shall be
19 considered in determining whether there is probable cause for the issuance of a search warrant
20 and in filling out any deficiencies in the description of the person, place, or thing to be searched
21 or of the property, article, material, substance, or person to be seized. Oral testimony shall not
22 be considered.

23 4. **In the case of written applications for search warrants** the judge shall hold a
24 nonadversary hearing to determine whether sufficient facts have been stated to justify the
25 issuance of a search warrant. If it appears from the application and any supporting affidavit that
26 there is probable cause to believe that property, article, material, substance, or person subject to
27 seizure is on the person or at the place or in the thing described, a search warrant shall
28 immediately be issued. The warrant shall be issued in the form of an original and two copies.

29 5. **In the case of written applications for search warrants** the application and any
30 supporting affidavit and a copy of the warrant shall be retained in the records of the court from
31 which the warrant was issued.

32 6. **When the offense in connection with which a search warrant is sought constitutes**
33 **terrorism, soliciting material support for terrorism, or providing material support for**
34 **terrorism, and if the circumstances make it reasonable to dispense, in whole or in part,**
35 **with a written application or affidavit, or both, a judge may issue a search warrant upon**
36 **oral testimony as follows:**

37 (1) **A judge may issue a search warrant based upon sworn testimony communicated**
38 **by telephone or other appropriate means;**

39 (2) **The person who is requesting the search warrant shall orally communicate to**
40 **the judge facts sufficient to show probable cause for the issuance of a search warrant;**

41 (3) **The judge shall hold a nonadversary hearing to determine whether sufficient**
42 **facts have been stated to justify the issuance of a search warrant. If it appears from the**
43 **oral testimony that there is probable cause to believe that property, article, material,**
44 **substance, or person subject to seizure is on the person or at the place or in the thing**
45 **described, a search warrant shall immediately be issued;**

46 (4) **The person who is requesting the warrant shall prepare a document to be**

47 known as a duplicate original search warrant and shall read such duplicate original
48 warrant, verbatim, to the judge. The judge shall enter verbatim what is so read to the
49 judge on a document to be known as the original search warrant. The judge may direct
50 that the warrant be modified;

51 (5) If the judge is satisfied that the offense in connection with which the search
52 warrant is sought constitutes terrorism, soliciting material support for terrorism, or
53 providing material support for terrorism, that the circumstances are such as to make it
54 reasonable to dispense with a written application or affidavit or both, and that grounds for
55 the application exist or that there is probable cause to believe that they exist, the judge
56 shall order the issuance of a search warrant by directing the person requesting the search
57 warrant to sign the judge's name on the duplicate original search warrant. The judge shall
58 immediately sign the original warrant and enter on the face of the original warrant the
59 exact time when the warrant was ordered to be issued. A copy of the original search
60 warrant shall be retained in the records of the court from which the warrant was issued.
61 The finding of probable cause for a warrant upon oral testimony may be based on the same
62 kind of evidence as is sufficient for a warrant upon a written application and affidavit;

63 (6) When a caller informs the judge that the purpose of the call is to request a
64 search warrant on the basis of oral testimony, the judge shall immediately place under oath
65 each person whose testimony forms a basis of the application and each person applying for
66 that search warrant. If a voice recording device is available, the judge shall record by
67 means of the device all of the call after the caller informs the judge that the purpose of the
68 call is to request a search warrant on the basis of oral testimony, otherwise a stenographic
69 or longhand verbatim record shall be made. If a voice recording device is used or a
70 stenographic record made, the judge shall have the record transcribed, shall certify the
71 accuracy of the transcription, and shall file a copy of the original record and the
72 transcription with the court. If a longhand verbatim record is made, the judge shall file
73 a signed copy with the court;

74 (7) The contents of a warrant upon oral testimony shall be the same as the contents
75 of a warrant upon affidavit;

76 (8) In addition to the requirements of any other provision of law relating to the
77 execution of search warrants, any person who executes a search warrant issued pursuant
78 to the provisions of this subsection shall enter the exact time of execution on the face of the
79 duplicate original;

80 (9) After execution of the search warrant, the duplicate search warrant with a
81 return thereon, signed by the officer making the search, shall be delivered to the judge who
82 issued the original search warrant. The return shall show the date and manner of

83 execution, what was seized, and the name of the possessor and of the owner, when he or she
84 is not the same person, if known. The return shall be accompanied by a copy of the
85 itemized receipt required by subsection 6 of section 542.291. The judge or clerk shall, upon
86 request, deliver a copy of such receipt to the person from whose possession the property
87 was taken and to the applicant for the warrant;

88 (10) Notwithstanding the provisions of subsection 10 of this section or of any other
89 law to the contrary, evidence obtained pursuant to a search warrant issued under this
90 subsection is not subject to a motion to suppress on the ground that the search warrant was
91 issued without a written application having been filed and verified or on the ground that
92 the circumstances were not such as to make it reasonable to dispense with a written
93 application or affidavit or both, absent a finding of bad faith. All other grounds to move
94 to suppress are preserved;

95 (11) The provisions of this subsection are inoperative on and after January 1, 2005;

96 (12) No evidence obtained pursuant to this subsection shall be inadmissible in a
97 court of law by virtue of subdivision (11) of this subsection.

98 7. The search warrant shall:

99 (1) Be in writing and in the name of the state of Missouri;

100 (2) Be directed to any peace officer in the state;

101 (3) State the time and date the warrant is issued;

102 (4) Identify the property, article, material, substance or person which is to be searched
103 for and seized, in sufficient detail and particularity that the officer executing the warrant can
104 readily ascertain it;

105 (5) Identify the person, place, or thing which is to be searched, in sufficient detail and
106 particularity that the officer executing the warrant can readily ascertain whom or what he is to
107 search;

108 (6) Command that the described person, place, or thing be searched and that any of the
109 described property, article, material, substance, or person found thereon or therein be seized or
110 photographed or copied and be returned, or the photograph or copy be brought, within ten days
111 after [filing] **the making** of the application, to the judge who issued the warrant, to be dealt with
112 according to law;

113 (7) Be signed by the judge, with his title of office indicated.

114 [7.] 8. A search warrant issued under this section may be executed only by a peace
115 officer. The warrant shall be executed by conducting the search and seizure commanded.

116 [8.] 9. A search warrant shall be executed as soon as practicable and shall expire if it is
117 not executed and the return made within ten days after the date of the making of the application.

118 [9.] 10. In the case of written applications for search warrants, after execution of the

119 search warrant, the warrant with a return thereon, signed by the officer making the search, shall
120 be delivered to the judge who issued the warrant. The return shall show the date and manner of
121 execution, what was seized, and the name of the possessor and of the owner, when he is not the
122 same person, if known. The return shall be accompanied by a copy of the itemized receipt
123 required by subsection 6 of section 542.291. The judge or clerk shall, upon request, deliver a
124 copy of such receipt to the person from whose possession the property was taken and to the
125 applicant for the warrant.

126 [10.] **11.** A search warrant shall be deemed invalid:

- 127 (1) If it was not issued by a judge; or
128 (2) If it was issued without a written application having been filed and verified; or
129 (3) If it was issued without probable cause; or
130 (4) If it was not issued in the proper county; or
131 (5) If it does not describe the person, place, or thing to be searched or the property,
132 article, material, substance, or person to be seized with sufficient certainty; or
133 (6) If it is not signed by the judge who issued it; or
134 (7) If it was not executed within the time prescribed by subsection 8 of this section.

542.404. 1. The elected prosecuting attorney of the county with the written authorization
2 of the attorney general of the state of Missouri may make application for an order authorizing
3 the interception of a wire communication. The supreme court of Missouri, upon notice that the
4 attorney general of the state of Missouri has authorized application for an interception of a wire
5 communication, shall appoint a circuit court from a circuit other than the circuit where the
6 application originates to approve or deny the application and to issue any necessary orders. Such
7 court may grant in conformity with sections 542.400 to 542.424, an order authorizing the
8 interception of wire communications by the law enforcement agency having responsibility for
9 the investigation of the offense if there is probable cause to believe that the interception may
10 provide evidence of:

11 (1) A felony which involves the manufacture, importation, receiving, possession, buying,
12 selling, prescription, administration, dispensation, distribution, compounding or otherwise
13 having in a person's control any controlled substance, as the term "controlled substance" is
14 defined by section 195.010, RSMo; or

15 (2) Any conspiracy to commit any of the offenses listed in subdivision (1) of this
16 subsection; **or**

17 (3) **Terrorism, soliciting material support for terrorism, or providing material**
18 **support for terrorism or any conspiracy to commit any of these offenses.**

19 2. Any order entered pursuant to the provisions of sections 542.400 to 542.424 shall
20 require live monitoring by appropriate law enforcement personnel of the interception of any wire

21 communication.

547.200. 1. An appeal may be taken by the state through the prosecuting or circuit
2 attorney from any order or judgment the substantive effect of which results in:

3 (1) Quashing an arrest warrant;

4 (2) A determination by the court that the accused lacks the mental capacity or fitness to
5 proceed to trial, pursuant to section 552.020, RSMo;

6 (3) Suppressing evidence; or

7 (4) Suppressing a confession or admission.

8 2. The state, in any criminal prosecution, shall be allowed an appeal in the cases and
9 under the circumstances mentioned in section 547.210 and in all other criminal cases except in
10 those cases where the possible outcome of such an appeal would result in double jeopardy for
11 the defendant. The supreme court shall issue rules governing such appeals.

12 3. The appeal provided in subsection 1 of this section shall be an interlocutory appeal,
13 filed in the appropriate district of the Missouri court of appeals, unless the proceedings involve
14 a charge of capital murder [or], murder in the first degree, **or terrorism**, pursuant to the
15 provisions of section 565.001 or 565.003, RSMo, in which case notices of appeal shall be filed
16 in the supreme court of Missouri.

17 4. Notices of appeal involving appeals under subsection 1 of this section shall be filed
18 in the appropriate court within five days of the entry of the order of the trial court. In such
19 appeals, the time requirements of section 545.780, RSMo, shall be tolled until the decision is
20 rendered by the appropriate appellate court.

21 5. The supreme court shall issue appropriate rules to facilitate the disposition of such
22 appeals, balancing the right of the state to review the correctness of pretrial decisions of a trial
23 court against the rights of the defendant to a speedy trial, including measures to facilitate these
24 appeals by shortening of the time to file appellant's brief under supreme court rule 30.06(K) to
25 ten days, and eliminations of motions for rehearing or transfer under supreme court rules 30.26
26 and 30.27.

556.036. 1. A prosecution for murder, **terrorism, soliciting material support for**
2 **terrorism, providing material support for terrorism, making a terroristic threat in the first**
3 **degree, making a terroristic threat in the second degree, hindering prosecution in the first**
4 **degree** or any class A felony may be commenced at any time.

5 2. Except as otherwise provided in this section, prosecutions for other offenses must be
6 commenced within the following periods of limitation:

7 (1) For any felony, three years;

8 (2) For any misdemeanor, one year;

9 (3) For any infraction, six months.

10 3. If the period prescribed in subsection 2 has expired, a prosecution may nevertheless
11 be commenced for:

12 (1) Any offense a material element of which is either fraud or a breach of fiduciary
13 obligation within one year after discovery of the offense by an aggrieved party or by a person
14 who has a legal duty to represent an aggrieved party and who is himself or herself not a party to
15 the offense, but in no case shall this provision extend the period of limitation by more than three
16 years. As used in this subdivision, the term "person who has a legal duty to represent an
17 aggrieved party" shall mean the attorney general or the prosecuting or circuit attorney having
18 jurisdiction pursuant to section 407.553, RSMo, for purposes of offenses committed pursuant
19 to sections 407.511 to 407.556, RSMo; and

20 (2) Any offense based upon misconduct in office by a public officer or employee at any
21 time when the defendant is in public office or employment or within two years thereafter, but in
22 no case shall this provision extend the period of limitation by more than three years; and

23 (3) Any offense based upon an intentional and willful fraudulent claim of child support
24 arrearage to a public servant in the performance of his or her duties within one year after
25 discovery of the offense, but in no case shall this provision extend the period of limitation by
26 more than three years.

27 4. An offense is committed either when every element occurs, or, if a legislative purpose
28 to prohibit a continuing course of conduct plainly appears, at the time when the course of
29 conduct or the defendant's complicity therein is terminated. Time starts to run on the day after
30 the offense is committed.

31 5. A prosecution is commenced either when an indictment is found or an information
32 filed.

33 6. The period of limitation does not run:

34 (1) During any time when the accused is absent from the state, but in no case shall this
35 provision extend the period of limitation otherwise applicable by more than three years; or

36 (2) During any time when the accused is concealing himself from justice either within
37 or without this state; or

38 (3) During any time when a prosecution against the accused for the offense is pending
39 in this state; or

40 (4) During any time when the accused is found to lack mental fitness to proceed pursuant
41 to section 552.020, RSMo.

558.041. 1. Any offender committed to the department of corrections, except those
2 persons committed pursuant to subsection 6 of section 558.016, or subsection 3 of section
3 558.018, or **section 574.115, 574.205, 574.210, 574.215, RSMo, or section 575.030, RSMo,**
4 may receive additional credit in terms of days spent in confinement upon recommendation for

5 such credit by the offender's institutional superintendent when the offender meets the
6 requirements for such credit as provided in subsections 3 and 4 of this section. Good time credit
7 may be rescinded by the director or his designee pursuant to the divisional policy issued pursuant
8 to subsection 3 of this section.

9 2. Any credit extended to an offender shall only apply to the sentence which the offender
10 is currently serving.

11 3. The director of the department of corrections shall issue a policy for awarding credit.
12 The policy may reward an inmate who has served his sentence in an orderly and peaceable
13 manner and has taken advantage of the rehabilitation programs available to him. Any violation
14 of institutional rules or the laws of this state may result in the loss of all or a portion of any credit
15 earned by the inmate pursuant to this section.

16 4. The department shall cause the policy to be published in the code of state regulations.

17 5. No rule or portion of a rule promulgated under the authority of this chapter shall
18 become effective unless it has been promulgated pursuant to the provisions of section 536.024,
19 RSMo.

565.001. 1. The provisions of this chapter shall govern the construction and procedures
2 for charging, trial, punishment and appellate review of **terrorism pursuant to section 574.215,**
3 **RSMo, or** any offense defined in this chapter and committed after July 1, 1984.

4 2. The provisions of this chapter shall not govern the construction or procedures for
5 charging, trial, punishment or appellate review of any offense committed before the effective
6 date of this chapter. Such an offense must be construed, punished, charged, tried and reviewed
7 on appeal according to applicable provisions of law existing prior to the effective date of this
8 chapter in the same manner as if this chapter had not been enacted, the provisions of section
9 1.160, RSMo, notwithstanding.

10 3. All provisions of "The Criminal Code" or other law consistent with the provisions of
11 this chapter shall apply to this chapter. In the event of a conflict, the provisions of this chapter
12 shall govern the interpretation of the provisions of this chapter.

13 4. Persons accused of committing a homicide **or terrorism** offense shall be prosecuted:

14 (1) In the county in which the offense is committed; or

15 (2) If the offense is committed partly in one county and partly in another, or if the
16 elements of the offense occur in more than one county, then in any of the counties where any
17 element of the offense occurred; or

18 (3) In the county in which the body of the deceased victim is found; or

19 (4) If subdivisions (1), (2), and (3) of this subsection do not apply, then in the county in
20 which **any of** the [victim] **victims** lived.

565.004. 1. Each homicide **or homicidal terrorism** offense which is lawfully joined

2 in the same indictment or information together with any homicide **or homicidal terrorism**
3 offense, or offense other than a homicide **or homicidal terrorism offense** shall be charged
4 together with such offense in separate counts. A count charging any [offense of] homicide **or**
5 **homicidal terrorism offense** may only be charged and tried together with one or more counts
6 of any other homicide **or homicidal terrorism offense**, or offense other than a homicide **or**
7 **homicidal terrorism offense**, as provided in subsection 2 of section 545.140, RSMo. Except
8 as provided in subsections 2, 3, and 4 of this section, no **offense of** murder in the first degree
9 [offense] **or terrorism which resulted in one or more deaths** may be tried together with any
10 offense other than murder in the first degree, **or terrorism which resulted in one or more**
11 **deaths**. In the event of a joinder of homicide offenses **or homicidal terrorism offenses or**
12 **homicide and homicidal terrorism offenses**, all offenses charged which are supported by the
13 evidence in the case, together with all proper lesser offenses under section 565.025, shall, when
14 requested by one of the parties or the court, be submitted to the jury or, in a jury-waived trial,
15 considered by the judge.

16 2. A count charging any [offense of] homicide **or homicidal terrorism offense** of a
17 particular individual may be joined in an indictment or information and tried with one or more
18 counts charging alternatively any other homicide **or homicidal terrorism offense** or offense
19 other than a homicide **or homicidal terrorism offense** committed against that individual. The
20 state shall not be required to make an election as to the alternative count on which it will
21 proceed. This subsection in no way limits the right to try in the conjunctive, where they are
22 properly joined under subsection 1 of this section, either separate offenses other than murder in
23 the first degree **or terrorism which resulted in one or more deaths** or separate offenses of
24 murder in the first degree **or terrorism which resulted in one or more deaths** committed
25 against different individuals.

26 3. When a defendant has been charged and proven before trial to be a prior offender
27 pursuant to chapter 558, RSMo, so that the judge shall assess punishment and not a jury for an
28 offense other than murder in the first degree **or terrorism which resulted in one or more**
29 **deaths**, that offense may be tried and submitted to the trier together with any **charge of** murder
30 in the first degree [charge] **or terrorism which resulted in one or more deaths** with which it
31 is lawfully joined. In such case the judge will assess punishment on any offense joined with a
32 **charge of** murder in the first degree [charge] **or terrorism which resulted in one or more**
33 **deaths** according to law and, when the trier is a jury, it shall be instructed upon punishment on
34 the charge of murder in the first degree **or terrorism which resulted in one or more deaths** in
35 accordance with section 565.030.

36 4. When the state waives the death penalty for a murder first degree offense **or terrorism**
37 **which resulted in one or more deaths**, that offense may be tried and submitted to the trier

38 together with any other charge with which it is lawfully joined.

565.005. 1. At a reasonable time before the commencement of the first stage of any trial
2 of murder in the first degree **or terrorism which resulted in one or more deaths** at which the
3 death penalty is not waived, the state and defendant, upon request and without order of the court,
4 shall serve counsel of the opposing party with:

5 (1) A list of all aggravating or mitigating circumstances as provided in subsection 1 of
6 section 565.032, which the party intends to prove at the second stage of the trial;

7 (2) The names of all persons whom the party intends to call as witnesses at the second
8 stage of the trial;

9 (3) Copies or locations and custodian of any books, papers, documents, photographs or
10 objects which the party intends to offer at the second stage of the trial. If copies of such
11 materials are not supplied to opposing counsel, the party shall cause them to be made available
12 for inspection and copying without order of the court.

13 2. The disclosures required in subsection 1 of this section are supplemental to those
14 required by rules of the supreme court relating to a continuing duty to disclose information, the
15 use of matters disclosed, matters not subject to disclosure, protective orders, and sanctions for
16 failure to comply with an applicable discovery rule or order, all of which shall also apply to any
17 disclosure required by this section.

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

7 2. No defendant who pleads guilty to a homicide **or homicidal terrorism** offense or who
8 is found guilty of a homicide **or homicidal terrorism** offense after trial to the court without a
9 jury shall be 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 **or terrorism which**
12 **resulted in one or more deaths** after a jury trial in which the state has not waived the death
13 penalty, the defendant may not waive a jury trial of the issue of the punishment to be imposed,
14 except by agreement with the state and the court.

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

565.030. 1. Where murder in the first degree **or terrorism which resulted in one or**
2 **more deaths** is charged but not submitted or where the state waives the death penalty, the

3 submission to the trier and all subsequent proceedings in the case shall proceed as in all other
4 criminal cases with a single stage trial in which guilt and punishment are submitted together.

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

14 3. If murder in the first degree **or terrorism which resulted in one or more deaths** is
15 submitted and the death penalty was not waived but the trier finds the defendant guilty of a lesser
16 [homicide] **offense**, a second stage of the trial shall proceed at which the only issue shall be the
17 punishment to be assessed and declared. No further evidence shall be received. If the trier is a
18 jury it shall be instructed on the law. The attorneys may then argue as in other criminal cases the
19 issue of punishment, after which the trier shall assess and declare the punishment as in all other
20 criminal cases.

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

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

36 (2) If the trier does not find beyond a reasonable doubt at least one of the statutory
37 aggravating circumstances set out in subsection 2 **or 3** of section 565.032; or

38 (3) If the trier concludes that there is evidence in mitigation of punishment, including

39 but not limited to evidence supporting the statutory mitigating circumstances listed in subsection
40 [3] **4** of section 565.032, which is sufficient to outweigh the evidence in aggravation of
41 punishment found by the trier; or

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

44

45 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set out
46 in writing the aggravating circumstance or circumstances listed in subsection **2 or 3** of section
47 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed
48 before the case is submitted that if it is unable to decide or agree upon the punishment the court
49 shall assess and declare the punishment at life imprisonment without eligibility for probation,
50 parole, or release except by act of the governor or death. The court shall follow the same
51 procedure as set out in this section whenever it is required to determine punishment for murder
52 in the first degree, **or terrorism which resulted in one or more deaths**.

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

57 6. As used in this section, the terms "mental retardation" or "mentally retarded" refer to
58 a condition involving substantial limitations in general functioning characterized by significantly
59 subaverage intellectual functioning with continual extensive related deficits and limitations in
60 two or more adaptive behaviors such as communication, self-care, home living, social skills,
61 community use, self-direction, health and safety, functional academics, leisure and work, which
62 conditions are manifested and documented before eighteen years of age.

63 7. The provisions of this section shall only govern offenses committed on or after August
64 28, 2001.

565.032. 1. In all cases of murder in the first degree **or terrorism which resulted in**
2 **one or more deaths** for which the death penalty is authorized, the judge in a jury-waived trial
3 shall consider, or he **or she** shall include in his **or her** instructions to the jury for it to consider:

4 (1) Whether a statutory aggravating circumstance or circumstances enumerated in
5 [subsection] **subsections 2 and 3** of this section [is] **are** established by the evidence beyond a
6 reasonable doubt; and

7 (2) If a statutory aggravating circumstance or circumstances is proven beyond a
8 reasonable doubt, whether the evidence as a whole justifies a sentence of death or a sentence of
9 life imprisonment without eligibility for probation, parole, or release except by act of the
10 governor. In determining the issues enumerated in subdivisions (1) and (2) of this subsection,

11 the trier shall consider all evidence which it finds to be in aggravation or mitigation of
12 punishment, including evidence received during the first stage of the trial and evidence
13 supporting any of the statutory aggravating or mitigating circumstances set out in subsections 2
14 [and], 3, **and 4** of this section. If the trier is a jury, it shall not be instructed upon any specific
15 evidence which may be in aggravation or mitigation of punishment, but shall be instructed that
16 each juror shall consider any evidence which he **or she** considers to be aggravating or mitigating.

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

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

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

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

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

30 (5) The murder in the first degree was committed against a judicial officer, former
31 judicial officer, prosecuting attorney or former prosecuting attorney, circuit attorney or former
32 circuit attorney, assistant prosecuting attorney or former assistant prosecuting attorney, assistant
33 circuit attorney or former assistant circuit attorney, peace officer or former peace officer, elected
34 official or former elected official during or because of the exercise of his **or her** official duty;

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

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

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

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

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

46 (11) The murder in the first degree was committed while the defendant was engaged in

47 the perpetration or was aiding or encouraging another person to perpetrate or attempt to
48 perpetrate a felony of any degree of rape, sodomy, burglary, robbery, kidnapping, or any felony
49 offense in chapter 195, RSMo;

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

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

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

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

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

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

66 **3. Statutory aggravating circumstances for a terrorism offense which resulted in**
67 **one or more deaths shall be limited to the following:**

68 **(1) The offense was committed by a person with a prior record of conviction for**
69 **murder in the first degree, terrorism, soliciting material support for terrorism, or**
70 **providing material support for terrorism, making a terroristic threat in the first degree,**
71 **making a terroristic threat in the second degree, or the offense was committed by a person**
72 **who has one or more serious assaultive criminal convictions;**

73 **(2) The offender by his or her terrorism knowingly created a great risk of death,**
74 **serious illness, or serious physical injury to more than one person by means of a weapon,**
75 **device, radioactive material, explosive nuclear device, or biological or chemical agent or**
76 **substance which would normally be hazardous to the lives of more than one person;**

77 **(3) The offender committed the offense of terrorism for himself or another, for the**
78 **purpose of receiving money or any other thing of monetary value from any of the victims**
79 **of the terrorism or another;**

80 **(4) Any victim of the terrorism was a judicial officer, former judicial officer,**
81 **prosecuting attorney or former prosecuting attorney, circuit attorney or former circuit**
82 **attorney, assistant prosecuting attorney or former assistant prosecuting attorney, assistant**

83 **circuit attorney or former assistant circuit attorney, peace officer or former peace officer,**
84 **elected official or former elected official engaged in the exercise of his or her official duty;**

85 **(5) The offender caused or directed another to commit terrorism or committed**
86 **terrorism as an agent or employee of another person;**

87 **(6) The underlying felony of murder in the first degree for the terrorism offense**
88 **was outrageously or wantonly vile, horrible or inhumane in that it involved torture, or**
89 **depravity of mind;**

90 **(7) Any victim of the terrorism was a peace officer, or fireman engaged in the**
91 **performance of his or her official duty;**

92 **(8) Ten or more people died or suffered serious physical injury as a result of the**
93 **terrorism;**

94 **(9) The terrorism caused substantial damage to five or more buildings or**
95 **inhabitable structures or substantial damage to a vital public facility which seriously**
96 **impairs its usefulness or operation.**

97 **4.** Statutory mitigating circumstances shall include the following:

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

99 (2) The murder in the first degree **or terrorism which resulted in one or more deaths,**
100 was committed while the defendant was under the influence of extreme mental or emotional
101 disturbance;

102 (3) [The victim was a participant] **Any of the victims were participants** in the
103 defendant's conduct or consented to the act;

104 (4) The defendant was an accomplice in the murder in the first degree, **or terrorism**
105 **which resulted in one or more deaths,** committed by another person and his **or her**
106 participation was relatively minor;

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

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

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

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

8 prescribed. The report by the judge shall be in the form of a standard questionnaire prepared and
9 supplied by the supreme court of Missouri.

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

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

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

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

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

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

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

25 (1) Affirm the sentence of death; or

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

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

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

44 supreme court shall be attached to the office of the clerk of the supreme court for administrative
45 purposes.

46 7. In addition to the mandatory sentence review, there shall be a right of direct appeal
47 of the conviction to the supreme court of Missouri. This right of appeal may be waived by the
48 defendant. If an appeal is taken, the appeal and the sentence review shall be consolidated for
49 consideration. The court shall render its decision on legal errors enumerated, the factual
50 substantiation of the verdict, and the validity of the sentence.

565.040. 1. In the event that the death penalty provided in this chapter is held to be
2 unconstitutional, any person convicted of murder in the first degree, **or terrorism which**
3 **resulted in one or more deaths**, shall be sentenced by the court to life imprisonment without
4 eligibility for probation, parole, or release except by act of the governor, with the exception that
5 when a specific aggravating circumstance found in a case is held to be unconstitutional or invalid
6 for another reason, the supreme court of Missouri is further authorized to remand the case for
7 resentencing or retrial of the punishment pursuant to subsection 5 of section [565.036] **565.035**.

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

574.115. 1. **A person commits the crime of making a terroristic threat in the first**
2 **degree when, with the intent to intimidate or coerce a significant portion of a civilian**
3 **population, he or she in any manner knowingly threatens to commit or threatens to cause**
4 **the commission of a terrorist act as defined in section 574.200 and thereby causes a**
5 **reasonable expectation or fear of the imminent commission of a terrorist act as defined in**
6 **section 574.200.**

7 2. A person commits the crime of making a terroristic threat **in the second degree** if
8 such person communicates a threat to commit a felony, a knowingly false report concerning the
9 commission of any felony, or knowingly false report concerning the occurrence of any
10 catastrophe:

11 (1) For the purpose of frightening or disturbing ten or more people;

12 (2) For the purpose of causing the evacuation or closure of any building, inhabitable
13 structure, place of assembly or facility of transportation; or

14 (3) With reckless disregard of the risk of causing the evacuation or closure of any

15 building, inhabitable structure, place of assembly or facility of transportation.

16 [2.] **3. Making a terroristic threat in the first degree is a felony for which the**
17 **authorized punishment is a term of years not less than nine years and not greater than**
18 **forty years. In addition the court shall sentence any person convicted pursuant to this**
19 **section to pay all expenses incurred by the federal government, state government, or any**
20 **unit of local government in responding to any violation of subsection 1 of this section or for**
21 **any cleanup caused by any violation of subsection 1 of this section. Making a terroristic**
22 **threat in the second degree is a class C felony unless committed under subdivision (3) of**
23 **subsection [1] 2 of this section in which case it is a class D felony.**

24 [3.] **4. As used in this section:**

25 (1) The term "threat" means an express or implied threat but does not include a report
26 made in good faith for the purpose of preventing harm; and

27 (2) The term "catastrophe" is defined by section 569.070, RSMo.

574.200. 1. Sections 574.200 to 574.230 shall be known and may be cited as the
2 **"Anti-Terrorism Act".**

3 **2. As used in sections 574.200 to 574.230 the following terms shall mean:**

4 (1) **"Agricultural production", the breeding and growing of livestock and crops;**

5 (2) **"Agricultural products", crops and livestock;**

6 (3) **"Biological products used in agriculture" includes, but is not limited to, seeds,**
7 **plants, and DNA of plants or animals altered for use in crop or livestock breeding or**
8 **production or which are sold, intended, designed, or produced for use in crop production**
9 **or livestock breeding or production;**

10 (4) **"Communications common carrier", any person engaged as a common carrier**
11 **in the transmission of communications by wire or radio, not including radio broadcasting;**

12 (5) **"Communications system", any works, property, or material of any radio,**
13 **television, telephone, microwave, or cable line, station, or system;**

14 (6) **"Computer", a device that accepts, processes, stores, retrieves, or outputs data,**
15 **and includes, but is not limited to, auxiliary storage and telecommunications devices;**

16 (7) **"Computer network", a set of related, remotely connected devices and any**
17 **communications facilities including more than one computer with the capability to**
18 **transmit data among them through communication facilities;**

19 (8) **"Computer program", a series of coded instruction or statements in a form**
20 **acceptable to a computer which causes the computer to process data and supply the results**
21 **of data processing;**

22 (9) **"Court of competent jurisdiction", any circuit court;**

23 (10) **"Crops", plants raised for human consumption or consumption by livestock**

24 or fruits that are intended for human consumption or consumption by livestock;

25 (11) "Data", representations of information, knowledge, facts, concepts or
26 instructions, including program documentation, that are prepared in a formalized manner
27 and are stored or processed in or transmitted by a computer. Data may be in any form
28 including, but not limited to, magnetic or optical storage media, punch cards, or data
29 stored internally in the memory of a computer;

30 (12) "Electronic communication", any transfer of signs, signals, writing, images,
31 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
32 pager, computer, or electromagnetic, photo electronic, or photo optical system where the
33 sending and receiving parties intend the electronic communication to be private and the
34 interception, recording, or transcription of the electronic communication is accomplished
35 by a device in a surreptitious manner contrary to the provisions of sections 574.200 to
36 574.230. Electronic communication does not include any wire or oral communication or
37 any communication from a tracking device;

38 (13) "Interception", the aural or other acquisition of the contents of any private
39 communication through the use of any electronic criminal surveillance device;

40 (14) "Livestock", animals bred or raised for human consumption;

41 (15) "Material support or resources", currency or other financial securities,
42 financial services, lodging, training, safe houses, false documentation or identification,
43 communications equipment, facilities, weapons, lethal substances, explosives, personnel,
44 transportation, or any other kind of physical assets or intangible property, and expert
45 services or expert assistance;

46 (16) "Oral communication", human speech used to communicate by one party to
47 another, in person, by wire communication or by any other means;

48 (17) "Person", an individual, public or private corporation, government,
49 partnership, or unincorporated association including, without limitation, any charitable
50 organization, whether incorporated or unincorporated, any professional fund-raiser,
51 professional solicitor, limited liability company, association, joint stock company, trust,
52 trustee, or any group of people formally or informally affiliated or associated for a
53 common purpose, and any officer, director, partner, member, or agent of any person;

54 (18) "Private communication", a wire, oral, or electronic communication uttered
55 or transmitted by a person exhibiting an expectation that the communication is not subject
56 to interception, under circumstances reasonably justifying the expectation. Circumstances
57 that reasonably justify the expectation that a communication is not subject to interception
58 include the use of a cordless telephone or cellular communication device;

59 (19) "Substantial damage", monetary damage greater than one hundred thousand

60 dollars;

61 (20) "Terrorist", any person who engages or is about to engage in a terrorist act
62 with the intent to intimidate or coerce a significant portion of a civilian population;

63 (21) "Terrorist act" or "act of terrorism":

64 (a) Any act that is intended to cause or create a risk and does cause or create a risk
65 of death or serious physical injury to one or more persons;

66 (b) Any act that disables or destroys the usefulness or operation of any
67 communications system;

68 (c) Any act or any series of two or more acts committed in furtherance of a single
69 intention, scheme, or design that disables or destroys the usefulness or operation of a
70 computer network, computers, computer programs, or data used by any industry, by any
71 class of business, or by five or more businesses or by the federal government, state
72 government, any local unit of government, a public utility, a manufacturer of
73 pharmaceuticals, a national defense contractor, or a manufacturer of chemical or
74 biological products used in or in connection with agricultural production;

75 (d) Any act that disables or causes substantial damage to or destruction of any
76 structure or facility used in or used in connection with ground, air, or water
77 transportation, the production or distribution of electricity, gas, oil, or other fuel, the
78 treatment of sewage or the treatment or distribution of water, or controlling the flow of
79 any body of water;

80 (e) Any act that causes substantial damage to or destruction of livestock or to crops
81 or a series of two or more acts committed in furtherance of a single intention, scheme, or
82 design, which in the aggregate, causes substantial damage to or destruction of livestock or
83 crops;

84 (f) Any act that causes substantial damage to or destruction of any hospital or any
85 building or facility used by the federal government, state government, any unit of local
86 government, or by a national defense contractor or by a public utility, a manufacturer of
87 pharmaceuticals, a manufacturer of chemical or biological products used in or in
88 connection with agricultural production or the storage or processing of agricultural
89 products or the preparation of agricultural products for food or food products intended
90 for resale or for feed for livestock; or

91 (g) Any act that causes substantial damage to any building containing five or more
92 businesses of any type or to any building in which ten or more people reside;

93 (22) "Wire communication", any human speech used to communicate by one party
94 to another in whole or in part through the use of facilities for the transmission of
95 communications by wire, cable, or other like connection between the point of origin and

96 the point of reception furnished or operated by a communications common carrier.

574.205. 1. A person commits the crime of soliciting material support for terrorism
2 if he or she knowingly raises, solicits, or collects material support or resources knowing
3 that the material support or resources will be used, in whole or in part, to plan, prepare,
4 carry out, or avoid apprehension for committing terrorism pursuant to section 574.215 or
5 causing a catastrophe pursuant to section 569.070, RSMo, or who knows and intends that
6 the material support or resources so raised, solicited, or collected will be used in the
7 commission of a terrorist act as defined in section 574.200 by an organization designated
8 under 8 U.S.C. 1189, as amended. It is not an element of the offense that the defendant
9 actually knows that an organization has been designated under 8 U.S.C. 1189, as amended.

10 2. Soliciting material support for terrorism is a felony for which the authorized
11 punishment is a term of years not less than nine years and not greater than forty years. In
12 addition the court shall sentence any person convicted pursuant to this section to pay all
13 expenses incurred by the federal government, state government, or any unit of local
14 government in responding to any violation of this section or for any cleanup caused by any
15 violation of this section.

574.210. 1. A person commits the crime of providing material support for
2 terrorism if he or she knowingly provides material support or resources to a person
3 knowing that the person will use that support or those resources in whole or in part to
4 plan, prepare, carry out, facilitate, or to avoid apprehension for committing terrorism
5 pursuant to section 574.215 or causing a catastrophe pursuant to section 569.070, RSMo.

6 2. Providing material support for terrorism is a felony for which the authorized
7 punishment is a term of years not less than nine and not greater than forty years. In
8 addition the court shall sentence any person convicted pursuant to this section to pay all
9 expenses incurred by the federal government, state government, or any unit of local
10 government in responding to any violation of this section or for any cleanup caused by any
11 violation of this section.

574.215. 1. A person commits the crime of terrorism when, with the intent to
2 intimidate or coerce a significant portion of a civilian population, he or she:

3 (1) Knowingly commits a terrorist act as defined in section 574.200; or

4 (2) While outside this state, knowingly commits a terrorist act as defined in section
5 574.200 that takes effect within this state or produces substantial detrimental effects within
6 this state.

7 2. Terrorism is a felony for which the authorized punishment is a term of years not
8 less than ten and not greater than thirty years or imprisonment for life unless the terrorist
9 act caused the death of one or more persons in which case the authorized punishment is

10 either death or imprisonment for life without eligibility for probation or parole, or release
11 except by act of the governor; except that, if a person has not reached his or her sixteenth
12 birthday at the time of the commission of the crime, the punishment shall be imprisonment
13 for life without eligibility for probation or parole, or release except by act of the governor.
14 In addition the court shall sentence any person convicted pursuant to this section to pay
15 all expenses incurred by the federal government, state government, or any unit of local
16 government in responding to any violation of this section or for any cleanup caused by any
17 violation of this section.

574.220. Whenever it appears to the attorney general or any prosecuting attorney
2 that any person is engaged in, or is about to engage in, any act that constitutes or would
3 constitute a violation of section 574.115, 574.205, 574.210, 574.215, or section 575.030,
4 RSMo, the attorney general or any prosecuting attorney may initiate a civil action in the
5 circuit court to enjoin the violation.

574.225. 1. The attorney general, any prosecuting attorney, or any person
2 designated in writing or by law to act for the attorney general or any prosecuting attorney
3 and to perform the attorney general's or prosecuting attorney's duties during his or her
4 absence or disability, may authorize in writing an ex parte application to the circuit judge
5 of a court of competent jurisdiction for an order authorizing the interception of a private
6 communication when no party has consented to the interception and the interception may
7 provide evidence of, or may assist in the apprehension of a person who has committed, is
8 committing, or is about to commit a violation of section 574.115, 574.205, 574.210, 574.215,
9 or section 575.030, RSMo.

10 2. This section is inoperative on and after January 1, 2005.

11 3. No conversations recorded or monitored pursuant to subsection 1 of this section
12 shall be made inadmissible in a court of law by virtue of subsection 2 of this section.

574.230. 1. Any person who commits any offense under section 574.115, 574.205,
2 574.210, 574.215, or section 575.030, RSMo, shall forfeit, according to the provisions of this
3 section, any moneys, profits, or proceeds, and any interest or property that the sentencing
4 court determines he or she acquired or maintained, directly or indirectly, in whole or in
5 part, as a result of using, being about to use, or intending to use such interest or property
6 in connection with the offense. The person shall also forfeit any interest in, security, claim
7 against, or contractual right of any kind which affords the person a source of influence
8 over any enterprise which he or she has established, operated, controlled, conducted, or
9 participated in conducting, where his or her relationship to or connection with any such
10 thing or activity directly or indirectly, in whole or in part, is traceable to any item or
11 benefit which he or she has obtained or acquired through an offense under section 574.115,

12 574.205, 574.210, 574.215, or section 575.030, RSMo, or which he or she used, is using, was
13 about to use, or intended to use in connection with any offense under section 574.115,
14 574.205, 574.210, 574.215, or section 575.030, RSMo. Forfeiture under this section may
15 only be pursued after such person has been charged with an offense under section 574.115,
16 574.205, 574.210, 574.215, or section 575.030, RSMo, and may be pursued in addition to
17 or in lieu of forfeiture proceedings under subsections 2, 3, and 4 of this section.
18 Proceedings instituted under this subsection shall be subject to and conducted in
19 accordance with the following procedures:

20 (1) The sentencing court shall, upon petition by the prosecuting attorney or
21 attorney general, at any time following sentencing, conduct a hearing to determine whether
22 any property or property interest is subject to forfeiture under this subsection. At the
23 forfeiture hearing the state shall have the burden of establishing, by a preponderance of
24 the evidence, that the property or property interests are subject to forfeiture;

25 (2) In any action brought by the state under this subsection the court shall have
26 jurisdiction to enter such restraining orders, injunctions, or prohibitions, or to take such
27 other action in connection with any real, personal, or mixed property, or other interest,
28 subject to forfeiture, as it shall consider proper;

29 (3) In any action brought by the state under this subsection in which any
30 restraining order, injunction, or prohibition or any other action in connection with any
31 property or interest subject to forfeiture under this subsection is sought, the circuit judge
32 presiding over the trial of the person or persons charged with a violation of section 574.115,
33 574.205, 574.210, 574.215, or section 575.030, RSMo, shall first determine whether there
34 is probable cause to believe that the person or persons so charged have committed an
35 offense under section 574.115, 574.205, 574.210, 574.215, or section 575.030, RSMo, and
36 whether the property or interest is subject to forfeiture under this subsection. In order to
37 make this determination, prior to entering any such order, the court shall conduct a
38 hearing without a jury in which the state shall establish probable cause that the person or
39 persons so charged have committed an offense under section 574.115, 574.205, 574.210,
40 574.215, or section 575.030, RSMo, and probable cause that any property or interest may
41 be subject to forfeiture under this subsection. The hearing may be conducted
42 simultaneously with a preliminary hearing if the prosecution is commenced by
43 information, or by motion of the state at any stage in the proceedings. The court may enter
44 a finding of probable cause at a preliminary hearing following the filing of an information
45 charging a violation of section 574.115, 574.205, 574.210, 574.215, or section 575.030,
46 RSMo, or after the return of an indictment by a grand jury charging an offense under
47 section 574.115, 574.205, 574.210, 574.215, or section 575.030, RSMo, as either shall be

48 sufficient probable cause for purposes of this subsection. Upon such finding, the circuit
49 judge shall enter such restraining order, injunction, or prohibition or shall take such other
50 action in connection with any such property or other interest subject to forfeiture under
51 this subsection as is necessary to ensure that the property is not removed from the
52 jurisdiction of the court, concealed, destroyed, or otherwise disposed of by the owner or
53 holder of that property or interest prior to a forfeiture hearing under this subsection. The
54 prosecuting attorney or attorney general shall file a certified copy of the restraining order,
55 injunction, or other prohibition with the recorder of deeds or license bureau of each county
56 where any such property of the defendant may be located. No such injunction, restraining
57 order, or other prohibition shall affect the rights of any bona fide purchaser, mortgagee,
58 judgment creditor, or other lienholder arising prior to the date of such filing. The court
59 may, at any time, upon verified petition by the defendant, conduct a hearing to release all
60 or portions of any such property or interest which the court previously determined to be
61 subject to forfeiture or subject to any restraining order, injunction, prohibition, or other
62 action. The court may release the property to the defendant for good cause shown and
63 within the sound discretion of the court;

64 (4) Upon a conviction of a person under section 574.115, 574.205, 574.210, 574.215,
65 or section 575.030, RSMo, the court shall authorize the prosecuting attorney or attorney
66 general to seize and sell all property or other interest declared forfeited under this section,
67 unless the property is required by law to be destroyed or is harmful to the public. The
68 court may order the prosecuting attorney or the attorney general to segregate funds from
69 the proceeds of the sale sufficient to satisfy any:

70 (a) Order of restitution as the court may deem appropriate;

71 (b) Legal right, title, or interest which the court deems superior to any right, title,
72 or interest of the defendant at the time of the commission of the acts which gave rise to
73 forfeiture under this subsection; or

74 (c) Bona fide purchaser for value of the right, title, or interest in the property who
75 was without reasonable notice that the property was subject to forfeiture.

76

77 Following the entry of an order of forfeiture, the prosecuting attorney or the attorney
78 general shall publish notice of the order and his or her intent to dispose of the property.
79 Within thirty days following the publication, any person may petition the court to
80 adjudicate the validity of his or her alleged interest in the property. After the deduction
81 of all requisite expenses of administration and sale, the prosecuting attorney or the
82 attorney general shall distribute the proceeds of the sale, along with any moneys forfeited
83 or seized, among participating law enforcement agencies in such equitable portions as the

84 court shall determine;

85 (5) No judge shall release any property or money seized under subdivision (1) or
86 (2) of this subsection for the payment of attorney's fees of any person claiming an interest
87 in such money or property.

88 2. Whenever it appears that there is probable cause to believe that any person used,
89 is using, is about to use, or is intending to use property in any way that constitutes or would
90 constitute a violation of section 574.115, 574.205, 574.210, 574.215, or section 575.030,
91 RSMo, and such person has not yet been charged with an offense under section 574.115,
92 574.205, 574.210, 574.215, or section 575.030, RSMo, the attorney general or the
93 prosecuting attorney of any county may make an ex parte application to the circuit court
94 to freeze or seize all the assets of that person and, upon a showing of probable cause in the
95 ex parte hearing, the circuit court judge shall issue an order to freeze or seize all assets of
96 that person. A copy of the freeze or seize order shall be served upon the person whose
97 assets have been frozen or seized and that person may, at any time within thirty days of
98 service, file a motion to release his or her assets. Within ten days that person is entitled to
99 a hearing. In any proceeding to release assets, the burden of proof shall be on the state to
100 show that the person used, was using, is about to use, or is intending to use any property
101 in any way that constitutes or would constitute a violation of section 574.115, 574.205,
102 574.210, 574.215, or section 575.030, RSMo. If the court finds that any property was being
103 used, is being used, is about to be used, or is intended to be used in any way that would
104 constitute a violation of section 574.115, 574.205, 574.210, 574.215, or section 575.030,
105 RSMo, the court shall order such property frozen or held until further order of the court.
106 Any property so ordered held or frozen shall be subject to forfeiture under the following
107 procedure. Upon request of the defendant, the court may release frozen or seized assets
108 sufficient to pay attorney's fees for representation of the defendant at a hearing conducted
109 under this section.

110 3. If within sixty days after any seizure or asset freeze under subsection 2 of this
111 section, a person having any property interest in the seized or frozen property is charged
112 with an offense, the court which renders judgment upon the charge shall, within thirty
113 days after the judgment, conduct a forfeiture hearing to determine whether the property
114 was used, about to be used, or intended to be used in violation of section 574.115, 574.205,
115 574.210, 574.215, or section 575.030, RSMo, or in connection with any violation or intended
116 violation of section 574.115, 574.205, 574.210, 574.215, or section 575.030, RSMo, or was
117 integrally related to any violation or intended violation of section 574.115, 574.205, 574.210,
118 574.215, or section 575.030, RSMo. The hearing shall be commenced by a written petition
119 filed by the prosecuting attorney or attorney general in circuit court, including material

allegations of fact, the name and address of every person determined by the state to have any property interest in the seized or frozen property, a representation that written notice of the date, time, and place of the hearing has been mailed to every such person by certified mail at least ten days before the date, and a request for forfeiture. Every such person may appear as a party and present evidence at the hearing. The quantum of proof required shall be preponderance of the evidence, and the burden of proof shall be on the state. If the court determines that the seized or frozen property was used, about to be used, or intended to be used in violation of section 574.115, 574.205, 574.210, 574.215, or section 575.030, RSMo, or in connection with any violation or intended violation of section 574.115, 574.205, 574.210, 574.215, or section 575.030, RSMo, or was integrally related to any violation or intended violation of section 574.115, 574.205, 574.210, 574.215, or section 575.030, RSMo, an order of forfeiture and disposition of the seized or frozen money and property shall be entered. All property forfeited may be liquidated and the resultant money together with any money forfeited shall be allocated among the participating law enforcement agencies in such proportions as may be determined to be equitable by the court entering the forfeiture order. Any such property so forfeited shall be received by the prosecuting attorney or attorney general and upon liquidation shall be allocated among the participating law enforcement agencies in such proportions as may be determined equitable by the court entering the forfeiture order.

4. If a seizure or asset freeze under subsection 2 of this section is not followed by a charge under section 574.115, 574.205, 574.210, 574.215, or section 575.030, RSMo, or if the prosecution of the charge is permanently terminated or indefinitely discontinued without any judgment of conviction, or if a judgment of acquittal is entered, the prosecuting attorney or attorney general shall commence an in rem proceeding for the forfeiture of any seized money or other thing of value, or both, in the circuit court and any person having any property interest in the money or property may commence separate civil proceedings in the manner provided by law. Any property or money so forfeited shall be allocated among the participating law enforcement agencies in such proportions as may be determined to be equitable by the court entering the forfeiture order.

575.030. 1. A person commits the crime of hindering prosecution **in the first degree** if for the purpose of preventing the apprehension, prosecution, conviction or punishment of another for conduct constituting [a] **the crime of terrorism** he or she:

(1) Harbors or conceals such person; or

(2) Warns such person of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring another into compliance with the law; or

8 (3) Provides such person with money, transportation, weapon, disguise or other means
9 to aid him **or her** in avoiding discovery or apprehension; or

10 (4) Prevents or obstructs, by means of force, deception or intimidation, anyone from
11 performing an act that might aid in the discovery or apprehension of such person[.]; **or**

12 (5) **Suppresses, by any act of concealment, alteration, or destruction, any physical**
13 **evidence that might aid in the discovery or apprehension of the person or in the lodging**
14 **of a criminal charge against the person; or**

15 (6) **Aids the person to protect or expeditiously profit from an advantage derived**
16 **from the crime; or**

17 (7) **Provides expert services or expert assistance to the person except that providing**
18 **expert services or expert assistance shall not be construed to apply to a licensed attorney**
19 **who discusses with a client the legal consequences of a proposed course of conduct or**
20 **advises a client of legal or constitutional rights or to a licensed medical doctor who**
21 **provides emergency medical treatment to a person whom he or she believes has committed**
22 **a violation of if, as soon as reasonably practicable, either before or after providing such**
23 **treatment, he or she notifies a law enforcement agency.**

24 **2. A person commits the crime of hindering prosecution in the second degree if for**
25 **the purpose of preventing the apprehension, prosecution, conviction, or punishment of**
26 **another for conduct constituting any crime, except terrorism, he or she:**

27 **(1) Harbors or conceals such person; or**

28 **(2) Warns such person of impending discovery or apprehension, except this does**
29 **not apply to a warning given in connection with an effort to bring another into compliance**
30 **with the law; or**

31 **(3) Provides such person with money, transportation, weapon, disguise, or other**
32 **means to aid him or her in avoiding discovery or apprehension; or**

33 **(4) Prevents or obstructs, by means of force, deception or intimidation, anyone**
34 **from performing an act that might aid in the discovery or apprehension of such person;**
35 **or**

36 **(5) Suppresses, by any act of concealment, alteration, or destruction, any physical**
37 **evidence that might aid in the discovery or apprehension of the person or in the lodging**
38 **of a criminal charge against the person; or**

39 **(6) Aids the person to protect or expeditiously profit from an advantage derived**
40 **from the crime; or**

41 **(7) Provides expert services or expert assistance to the person except that providing**
42 **expert services or expert assistance shall not be construed to apply to a licensed attorney**
43 **who discusses with a client the legal consequences of a proposed course of conduct or**

44 **advises a client of legal or constitutional rights or to a licensed medical doctor who**
45 **provides emergency medical treatment to a person whom he or she believes has committed**
46 **a violation under section 574.115, 574.205, 574.210, 574.215, or section 575.030, RSMo, if,**
47 **as soon as reasonably practicable, either before or after providing such treatment, he or**
48 **she notifies a law enforcement agency.**

49 [2. Hindering prosecution is a class D felony if the conduct of the other person
50 constitutes a felony; otherwise] 3. Hindering prosecution **in the second degree** is a class A
51 misdemeanor **unless the conduct of the other person constitutes any felony except terrorism**
52 **in which case it is a class D felony.**

53 **4. Hindering prosecution in the first degree is a felony for which the authorized**
54 **punishment is a term of years not less than twenty and not greater than thirty years or**
55 **imprisonment for life unless the conduct of the other person resulted in death in which case**
56 **the authorized punishment is imprisonment for life without eligibility for probation or**
57 **parole, or release except by act of the governor.**

650.055. 1. Every individual convicted in a Missouri circuit court[,] **of terrorism,**
2 **soliciting material support for terrorism, or of providing material support for terrorism,**
3 **or** of a felony, defined as a violent offense under chapter 565, RSMo, or as a sex offense under
4 chapter 566, RSMo, excluding sections 566.010 and 566.020, RSMo, shall have a blood or
5 scientifically accepted biological sample collected for purposes of DNA profiling analysis:

6 (1) Upon entering the department of correction's reception and diagnostic centers; or

7 (2) Before release from a county jail or detention facility; or

8 (3) If such individual is under the jurisdiction of the department of corrections on or after
9 August 28, 1996. Such jurisdiction includes persons currently incarcerated, persons on
10 probation, as defined in section 217.650, RSMo, and on parole, as also defined in section
11 217.650, RSMo.

12 2. The Missouri state highway patrol and department of corrections shall be responsible
13 for ensuring adherence to the law. Any person required to provide a DNA sample pursuant to
14 this section shall be required to provide such sample, without the right of refusal, at a collection
15 site designated by the Missouri state highway patrol and the department of corrections.
16 Authorized personnel collecting or assisting in the collection of samples shall not be liable in any
17 civil or criminal action when the act is performed in a reasonable manner. Such force may be
18 used as necessary to the effectual carrying out and application of such processes and operations.
19 The enforcement of these provisions by the authorities in charge of state correctional institutions
20 and others having custody of those convicted of the felony which shall not be set aside or
21 reversed, is hereby made mandatory.

22 3. The procedure and rules for the collection, analysis, storage, expungement, use of

23 DNA database records and privacy concerns shall not conflict with procedures and rules
24 applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA
25 data bank system.

26 4. Unauthorized uses or dissemination of individually identifiable DNA information in
27 a database for purposes other than criminal justice or law enforcement is a class A misdemeanor.

28 5. Implementation of section 650.050 and this section shall be subject to future
29 appropriations to keep Missouri's DNA system compatible with the Federal Bureau of
30 Investigation's DNA data bank system.

Section B. Because immediate action is necessary to prevent terrorism section A of this
2 act is deemed necessary for the immediate preservation of the public health, welfare, peace, and
3 safety, and is hereby declared to be an emergency act within the meaning of the constitution, and
4 section A of this act shall be in full force and effect upon its passage and approval.