

SECOND REGULAR SESSION

# HOUSE BILL NO. 2459

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DOGAN.

6418H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal section 565.030, RSMo, and to enact in lieu thereof one new section relating to trial procedures for murder in the first degree.

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

Section A. Section 565.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 565.030, to read as follows:

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

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

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

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

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