

FIRST REGULAR SESSION

# HOUSE BILL NO. 353

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HANNEGAN.

0725H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

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

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

Section A. Section 565.020, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 565.020 and 565.028, to read as follows:

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

2. The offense of murder in the first degree is a class A felony, and, if a person is eighteen years of age or older at the time of the offense, the punishment shall be either death or imprisonment for life without eligibility for probation or parole, or release except by act of the governor; **except that, a person who raises the matter of his or her serious mental illness at the time of the commission of the offense and is found to have suffered from a serious mental illness at the time of the commission of the offense under section 565.028 shall be ineligible for a sentence of death due to a serious mental illness.** If a person has not reached his or her eighteenth birthday at the time of the commission of the offense, the punishment shall be as provided under section 565.033.

**565.028. 1. (1) Subject to subdivision (2) of this subsection, a person has a serious mental illness if the following apply:**

**(a) The person has been diagnosed as described in paragraph (b) of this subdivision with one or more of the following conditions:**

- a. Schizophrenia;
- b. Schizoaffective disorder;

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.

- 7           **c. Bipolar disorder, with psychotic features;**  
8           **d. Major depressive disorder, with psychotic features;**  
9           **e. Delusional disorders;**  
10          **f. Traumatic brain injury; or**  
11          **g. Posttraumatic stress disorder (PTSD);**
- 12          **(b) At the time of the commission of the offense, the condition or conditions**  
13 **described in paragraph (a) of this subdivision with which the person has been diagnosed,**  
14 **while not meeting the standard to be found not guilty by reason of mental disease or defect**  
15 **under section 552.030, the standard to be found incompetent to stand trial as described in**  
16 **section 552.020, or the standard for mental disease or defect under subdivision (8) of**  
17 **subsection 2 of section 552.015, nevertheless significantly impaired the person's capacity**  
18 **to do one or more of the following:**
- 19           **a. Exercise rational judgment in relation to the person's conduct;**  
20           **b. Conform the person's conduct to the requirements of law; or**  
21           **c. Appreciate the nature, consequences, or wrongfulness of the person's conduct.**
- 22          **(2) A disorder manifested primarily by repeated criminal conduct or attributable**  
23 **solely to the acute effects of voluntary use of alcohol or any other drug of abuse does not,**  
24 **standing alone, constitute a serious mental illness for purposes of this section.**
- 25          **2. The diagnosis of a person with a condition or conditions described in paragraph**  
26 **(a) of subdivision (1) of subsection 1 of this section may be made at any time prior to, on,**  
27 **or after the day of the commission of the offense or the day on which the person under**  
28 **subsection 3 of this section raises the matter of the person's serious mental illness at the**  
29 **time of the commission of the offense. Diagnosis of the condition or conditions after the**  
30 **date of the commission of the offense does not preclude the person from presenting**  
31 **evidence that the person had a serious mental illness at the time of the commission of the**  
32 **offense or, in the circumstances described in subsection 3, 4, 5, or 6 of this section, from**  
33 **having the benefit of the rebuttable presumption described in such subsections.**
- 34          **3. A person charged with murder in the first degree may raise the issue of a serious**  
35 **mental illness at the time of the commission of the offense to exempt himself or herself from**  
36 **eligibility for a sentence of death.**
- 37          **4. (1) If the defense raises the matter of the defendant's serious mental illness at**  
38 **the time of the commission of the offense, the court shall, at the request of the state or the**  
39 **defense, order an evaluation of the accused in accordance with the provisions of this**  
40 **section.**
- 41          **(2) The state shall not use any evidence against the defendant acquired as a result**  
42 **of any evaluation ordered under this section or call any examiner who performed such an**

43 evaluation on the defendant as a witness against the defendant unless and until the defense  
44 presents such evidence at a hearing on the matter of the defendant's serious mental illness  
45 at the time of the commission of the offense. The state may then call the examiner and use  
46 the information the examiner obtained at the hearing on this issue.

47 (3) Neither the appointment nor the testimony of an examiner in an evaluation  
48 ordered under this section precludes the prosecutor or defense counsel from calling other  
49 witnesses or presenting other evidence on the issue of the person's serious mental illness.

50 (4) No statement that a person makes in an evaluation ordered under this section  
51 or in a pretrial hearing or proceeding under this section relating to the person's serious  
52 mental illness at the time of the commission of the offense shall be used against the person  
53 on the issue of guilt in any criminal action or proceeding.

54 5. If a person raises the matter of his or her serious mental illness at the time of the  
55 commission of the offense and submits prima facie evidence that he or she has a serious  
56 mental illness as described in paragraph (a) of subdivision (1) of subsection 1 of this section  
57 and that the condition existed at the time of the commission of the offense, the prosecution  
58 shall have an opportunity to present evidence to contest the serious mental illness or to  
59 rebut the presumption that the condition, if present, significantly impaired the person's  
60 capacity at the time of the commission of the offense in a manner described in  
61 subparagraph a., b., or c. of paragraph (b) of subdivision (1) of subsection 1 of this section.  
62 The prosecution has the burden of proving, beyond a reasonable doubt, that the serious  
63 mental illness did not exist at the time of the commission of the offense or, if present, to  
64 establish beyond a reasonable doubt that the serious mental illness did not significantly  
65 impair the person's capacity at the time of the commission of the offense in a manner  
66 described in subparagraph a., b., or c. of paragraph (b) of subdivision (1) of subsection 1  
67 of this section.

68 6. (1) If a person raises the matter of his or her serious mental illness at the time  
69 of the commission of the offense, and the state contests the application of the exemption  
70 based on the information the defense provides, the defense shall be entitled to a pretrial  
71 hearing and determination on eligibility for the exemption.

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

75 (3) At such a hearing, the defense shall produce some evidence, from any source,  
76 to establish a prima facie case that the defendant suffered from a serious mental illness, as  
77 described in paragraph (a) of subdivision (1) of subsection 1 of this section. If the defense  
78 submits prima facie evidence that the person had a serious mental illness at the time of the

79 commission of the offense, it shall be rebuttably presumed that the condition significantly  
80 impaired the person's capacity at the time of the commission of the offense in a manner  
81 described in subparagraph a., b., or c. of paragraph (b) of subdivision (1) of subsection 1  
82 of this section.

83 (4) The state may then present evidence to rebut the presumption and establish,  
84 beyond a reasonable doubt, that the defendant did not suffer from a serious mental illness  
85 at the time of the commission of the offense and that the serious mental illness, if present,  
86 did not substantially impair the capacity of the accused at the time of the commission of  
87 the offense in a manner described in subparagraph a., b., or c. of paragraph (b) of  
88 subdivision (1) of subsection 1 of this section.

89 (5) If the court finds that the state failed to rebut the presumption, or the state  
90 failed to present evidence to prove, beyond a reasonable doubt, that the accused did not  
91 have a serious mental illness, or that the state failed to present evidence to prove, beyond  
92 a reasonable doubt, that the serious mental illness, if present, did not substantially impair  
93 his or her capacity at the time of the commission of the offense, the court shall find that the  
94 exemption applies and direct judgment on the matter of the exemption in favor of the  
95 defendant.

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

101 7. A person's pleading of not guilty due to mental disease or defect or incapacity  
102 to stand trial, or a finding after such a plea that the person does not suffer from mental  
103 disease or defect or has capacity to stand trial, does not preclude the person from raising  
104 the matter of the person's serious mental illness at the time of the commission of the offense  
105 under this section and, if a person so raises that matter, does not limit or affect any of the  
106 procedures described in this section or the authority of a court to make any finding  
107 described in this section.

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