

# SENATE BILL NO. 465

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEWIS.

1339S.01I

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 546.680, 546.690, 546.700, 546.710, 546.720, 546.730, 546.740, 546.750, 546.800, 546.810, 546.820, 557.021, 565.004, 565.005, 565.006, 565.020, 565.030, 565.032, 565.035, and 565.040, RSMo, and to enact in lieu thereof five new sections relating to repealing the death penalty, with penalty provisions.

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

Section A. Sections 546.680, 546.690, 546.700, 546.710, 2 546.720, 546.730, 546.740, 546.750, 546.800, 546.810, 546.820, 3 557.021, 565.004, 565.005, 565.006, 565.020, 565.030, 565.032, 4 565.035, and 565.040, RSMo, are repealed and five new sections 5 5 enacted in lieu thereof, to be known as sections 557.021, 6 565.004, 565.006, 565.020, and 565.040, to read as follows:

557.021. 1. Any offense defined outside this code 2 **[which] that** is declared to be a misdemeanor without 3 specification of the penalty therefor is a class A 4 misdemeanor.

2. Any offense defined outside this code **[which] that** 5 is declared to be a felony without specification of the 6 penalty therefor is a class E felony. 7

3. For the purpose of applying the extended term 8 provisions of section 558.016 and the minimum prison term 9 provisions of section 558.019 and for determining the 10 penalty for attempts, offenses defined outside of this code 11 shall be classified as follows: 12

13 (1) If the offense is a felony:

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

14 (a) It is a class A felony if the authorized penalty  
15 includes [death,] life imprisonment; **imprisonment for life**  
16 **without eligibility for probation, parole, or release except**  
17 **by act of the governor;** or imprisonment for a term of twenty  
18 years or more;

19 (b) It is a class B felony if the maximum term of  
20 imprisonment authorized exceeds ten years but is less than  
21 twenty years;

22 (c) It is a class C felony if the maximum term of  
23 imprisonment authorized is ten years;

24 (d) It is a class D felony if the maximum term of  
25 imprisonment exceeds four years but is less than ten years;

26 (e) It is a class E felony if the maximum term of  
27 imprisonment is four years or less;

28 (2) If the offense is a misdemeanor:

29 (a) It is a class A misdemeanor if the authorized  
30 imprisonment exceeds six months in jail;

31 (b) It is a class B misdemeanor if the authorized  
32 imprisonment exceeds thirty days but is not more than six  
33 months;

34 (c) It is a class C misdemeanor if the authorized  
35 imprisonment is thirty days or less;

36 (d) It is a class D misdemeanor if it includes a  
37 mental state as an element of the offense and there is no  
38 authorized imprisonment;

39 (e) It is an infraction if there is no authorized  
40 imprisonment.

565.004. 1. Each homicide offense [which] **that** is  
2 lawfully joined in the same indictment or information  
3 together with any homicide offense or offense other than a  
4 homicide shall be charged together with such offense in  
5 separate counts. A count charging any offense of homicide

6 may only be charged and tried together with one or more  
7 counts of any other homicide or offense other than a  
8 homicide as provided in subsection 2 of section 545.140.  
9 Except as provided in subsections 2[, ] **and** 3[, and 4] of  
10 this section, no murder in the first degree offense may be  
11 tried together with any offense other than murder in the  
12 first degree. In the event of a joinder of homicide  
13 offenses, all offenses charged which are supported by the  
14 evidence in the case, together with all proper lesser  
15 offenses under section 565.029, shall, when requested by one  
16 of the parties or the court, be submitted to the jury or, in  
17 a jury-waived trial, considered by the judge.

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

30       3. When a defendant has been charged and proven before  
31 trial to be a prior offender pursuant to chapter 558 so that  
32 the judge shall assess punishment and not a jury for an  
33 offense other than murder in the first degree, that offense  
34 may be tried and submitted to the trier together with any  
35 murder in the first degree charge with which it is lawfully  
36 joined. In such case the judge will assess punishment on  
37 any offense joined with a murder in the first degree charge

38 according to law and, when the trier is a jury, it shall be  
39 instructed upon punishment on the charge of murder in the  
40 first degree [in accordance with section 565.030.

41 4. When the state waives the death penalty for a  
42 murder first degree offense, that offense may be tried and  
43 submitted to the trier together with any other charge with  
44 which it is lawfully joined].

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

10 2. No defendant who pleads guilty to a homicide  
11 offense or who is found guilty of a homicide offense after  
12 trial to the court without a jury shall be permitted a trial  
13 by jury on the issue of the punishment to be imposed, except  
14 by agreement of the state.

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

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

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

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

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

          2. In [the event that] any **case in which a** death  
13 sentence **has previously been** imposed pursuant to this  
14 chapter [is held to be unconstitutional,] **but has not been**  
15 **executed**, the trial court [which] **that** previously sentenced  
16 the defendant to death shall cause the defendant to be  
17 brought before the court and shall sentence the defendant to  
18 life imprisonment without eligibility for probation, parole,  
19 or release except by act of the governor[, with the  
20 exception that when a specific aggravating circumstance  
21 found in a case is held to be inapplicable, unconstitutional  
22 or invalid for another reason, the supreme court of Missouri  
23 is further authorized to remand the case for retrial of the  
24 punishment pursuant to subsection 5 of section 565.035].

2 [546.680. When judgment of death is  
3 rendered by any court of competent jurisdiction,  
4 a warrant signed by the judge and attested by  
5 the clerk under the seal of the court must be  
6 drawn and delivered to the sheriff. It must  
7 state the conviction and judgment and appoint a  
8 day on which the judgment must be executed,  
9 which must not be less than thirty nor more than  
10 sixty days from the date of judgment, and must  
11 direct the sheriff to deliver the defendant, at  
12 a time specified in said order, not more than  
13 ten days from the date of judgment, to the chief  
14 administrative officer of a correctional  
15 facility of the department of corrections, for  
execution.]

2 [546.690. The judge of a court at which a  
3 conviction is had must, immediately after the  
4 conviction, transmit to the governor of the  
5 state, by mail or otherwise, a statement of the  
conviction and judgment.]

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

2 [546.710. Upon such convicted offender  
3 being brought before the court, they shall  
4 proceed to inquire into the facts, and if no  
5 legal reasons exist against the execution of  
6 sentence, such court shall issue a warrant to  
7 the director of the department of corrections,  
8 for the execution of the prisoner at the time  
9 therein specified, which execution shall be  
obeyed by the director accordingly.]

2 [546.720. 1. The manner of inflicting the  
punishment of death shall be by the

3 administration of lethal gas or by means of the  
4 administration of lethal injection. And for  
5 such purpose the director of the department of  
6 corrections is hereby authorized and directed to  
7 provide a suitable and efficient room or place,  
8 enclosed from public view, within the walls of a  
9 correctional facility of the department of  
10 corrections, and the necessary appliances for  
11 carrying into execution the death penalty by  
12 means of the administration of lethal gas or by  
13 means of the administration of lethal injection.

14 2. The director of the department of  
15 corrections shall select an execution team which  
16 shall consist of those persons who administer  
17 lethal gas or lethal chemicals and those  
18 persons, such as medical personnel, who provide  
19 direct support for the administration of lethal  
20 gas or lethal chemicals. The identities of  
21 members of the execution team, as defined in the  
22 execution protocol of the department of  
23 corrections, shall be kept confidential.

24 Notwithstanding any provision of law to the  
25 contrary, any portion of a record that could  
26 identify a person as being a current or former  
27 member of an execution team shall be privileged  
28 and shall not be subject to discovery, subpoena,  
29 or other means of legal compulsion for  
30 disclosure to any person or entity, the  
31 remainder of such record shall not be privileged  
32 or closed unless protected from disclosure by  
33 law. The section of an execution protocol that  
34 directly relates to the administration of lethal  
35 gas or lethal chemicals is an open record, the  
36 remainder of any execution protocol of the  
37 department of corrections is a closed record.

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

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

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

51 (a) Actual damages; and

52 (b) Punitive damages on a showing of a  
53 willful violation of this section.

54 4. Notwithstanding any provision of law to  
55 the contrary, if a member of the execution team  
56 is licensed by a board or department, the  
57 licensing board or department shall not censure,  
58 reprimand, suspend, revoke, or take any other  
59 disciplinary action against the person's license  
60 because of his or her participation in a lawful  
61 execution. All members of the execution team  
62 are entitled to coverage under the state legal  
63 expense fund established by section 105.711 for  
64 conduct of such execution team member arising  
65 out of and performed in connection with his or  
66 her official duties on behalf of the state or  
67 any agency of the state, provided that moneys in  
68 this fund shall not be available for payment of  
69 claims under chapter 287.]

2 [546.730. A judgment of death must be  
3 executed within a correctional center of the  
4 department of corrections; and such execution  
5 shall be under the supervision and direction of  
6 the director of the department of corrections.]

2 [546.740. The chief administrative officer  
3 of the correctional center, or his duly  
4 appointed representative shall be present at the  
5 execution and the director of the department of  
6 corrections shall invite the presence of the  
7 attorney general of the state, and at least  
8 eight reputable citizens, to be selected by him;  
9 and he shall at the request of the defendant,  
10 permit such clergy or religious leaders, not  
11 exceeding two, as the defendant may name, and  
12 any person, other than another incarcerated  
13 offender, relatives or friends, not to exceed  
14 five, to be present at the execution, together  
15 with such peace officers as he may think  
expedient, to witness the execution; but no



16 person under twenty-one years of age shall be  
17 allowed to witness the execution.]

[546.750. After the execution the chief  
2 administrative officer of the correctional  
3 facility shall make a return upon the death  
4 warrant to the court by which the judgment was  
5 rendered, showing the time, mode and manner in  
6 which it was executed.]

[546.800. If, after any female convict  
2 shall be sentenced to the punishment of death,  
3 the officer having charge of her person shall  
4 have reason to suspect that she is pregnant, he  
5 shall in like manner summon a jury of six  
6 persons, not less than three of whom shall be  
7 physicians, and shall give notice thereof to the  
8 prosecuting attorney of the county where such  
9 criminal proceedings originated, or to the  
10 circuit attorney of the city of St. Louis, if  
11 such criminal proceedings originated in that  
12 city, who shall attend, and the proceedings  
13 shall be had as provided.]

[546.810. The inquisition shall be signed  
2 by the jury and the officer in charge of such  
3 convict, and if it appear that such female  
4 convict is pregnant with child, her execution  
5 shall be suspended and the inquisition shall be  
6 transmitted to the governor.]

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

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

7 (1) A list of all aggravating or  
8 mitigating circumstances as provided in

9 subsection 1 of section 565.032, which the party  
10 intends to prove at the second stage of the  
11 trial;

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

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

23 2. The disclosures required in subsection  
24 1 of this section are supplemental to those  
25 required by rules of the supreme court relating  
26 to a continuing duty to disclose information,  
27 the use of matters disclosed, matters not  
28 subject to disclosure, protective orders, and  
29 sanctions for failure to comply with an  
30 applicable discovery rule or order, all of which  
31 shall also apply to any disclosure required by  
32 this section.]

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

7 2. Where murder in the first degree is  
8 submitted to the trier without a waiver of the  
9 death penalty, the trial shall proceed in two  
10 stages before the same trier. At the first  
11 stage the trier shall decide only whether the  
12 defendant is guilty or not guilty of any  
13 submitted offense. The issue of punishment  
14 shall not be submitted to the trier at the first  
15 stage. If an offense is charged other than  
16 murder in the first degree in a count together  
17 with a count of murder in the first degree, the  
18 trial judge shall assess punishment on any such  
19 offense according to law, after the defendant is

20 found guilty of such offense and after he finds  
21 the defendant to be a prior offender pursuant to  
22 chapter 558.

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

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

58 (1) If the trier finds by a preponderance  
59 of the evidence that the defendant is  
60 intellectually disabled; or

61 (2) If the trier does not find beyond a  
62 reasonable doubt at least one of the statutory

63 aggravating circumstances set out in subsection  
64 2 of section 565.032; or

65 (3) If the trier concludes that there is  
66 evidence in mitigation of punishment, including  
67 but not limited to evidence supporting the  
68 statutory mitigating circumstances listed in  
69 subsection 3 of section 565.032, which is  
70 sufficient to outweigh the evidence in  
71 aggravation of punishment found by the trier; or

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

76 If the trier assesses and declares the  
77 punishment at death it shall, in its findings or  
78 verdict, set out in writing the aggravating  
79 circumstance or circumstances listed in  
80 subsection 2 of section 565.032 which it found  
81 beyond a reasonable doubt. If the trier is a  
82 jury it shall be instructed before the case is  
83 submitted that if it is unable to decide or  
84 agree upon the punishment the court shall assess  
85 and declare the punishment at life imprisonment  
86 without eligibility for probation, parole, or  
87 release except by act of the governor or death.  
88 The court shall follow the same procedure as set  
89 out in this section whenever it is required to  
90 determine punishment for murder in the first  
91 degree.

92 5. Upon written agreement of the parties  
93 and with leave of the court, the issue of the  
94 defendant's intellectual disability may be taken  
95 up by the court and decided prior to trial  
96 without prejudicing the defendant's right to  
97 have the issue submitted to the trier of fact as  
98 provided in subsection 4 of this section.

99 6. As used in this section, the terms  
100 "intellectual disability" or "intellectually  
101 disabled" refer to a condition involving  
102 substantial limitations in general functioning  
103 characterized by significantly subaverage  
104 intellectual functioning with continual  
105 extensive related deficits and limitations in  
106 two or more adaptive behaviors such as

107 communication, self-care, home living, social  
108 skills, community use, self-direction, health  
109 and safety, functional academics, leisure and  
110 work, which conditions are manifested and  
111 documented before eighteen years of age.

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

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

6 (1) Whether a statutory aggravating  
7 circumstance or circumstances enumerated in  
8 subsection 2 of this section is established by  
9 the evidence beyond a reasonable doubt; and

10 (2) If a statutory aggravating  
11 circumstance or circumstances is proven beyond a  
12 reasonable doubt, whether the evidence as a  
13 whole justifies a sentence of death or a  
14 sentence of life imprisonment without  
15 eligibility for probation, parole, or release  
16 except by act of the governor.

17 In determining the issues enumerated in  
18 subdivisions (1) and (2) of this subsection, the  
19 trier shall consider all evidence which it finds  
20 to be in aggravation or mitigation of  
21 punishment, including evidence received during  
22 the first stage of the trial and evidence  
23 supporting any of the statutory aggravating or  
24 mitigating circumstances set out in subsections  
25 2 and 3 of this section. If the trier is a  
26 jury, it shall not be instructed upon any  
27 specific evidence which may be in aggravation or  
28 mitigation of punishment, but shall be  
29 instructed that each juror shall consider any  
30 evidence which he or she considers to be  
31 aggravating or mitigating.

32 2. Statutory aggravating circumstances for  
33 a murder in the first degree offense shall be  
34 limited to the following:

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

40 (2) The murder in the first degree offense  
41 was committed while the offender was engaged in  
42 the commission or attempted commission of  
43 another unlawful homicide;

44 (3) The offender by his or her act of  
45 murder in the first degree knowingly created a  
46 great risk of death to more than one person by  
47 means of a weapon or device which would normally  
48 be hazardous to the lives of more than one  
49 person;

50 (4) The offender committed the offense of  
51 murder in the first degree for himself or  
52 herself or another, for the purpose of receiving  
53 money or any other thing of monetary value from  
54 the victim of the murder or another;

55 (5) The murder in the first degree was  
56 committed against a judicial officer, former  
57 judicial officer, prosecuting attorney or former  
58 prosecuting attorney, circuit attorney or former  
59 circuit attorney, assistant prosecuting attorney  
60 or former assistant prosecuting attorney,  
61 assistant circuit attorney or former assistant  
62 circuit attorney, peace officer or former peace  
63 officer, elected official or former elected  
64 official during or because of the exercise of  
65 his official duty;

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

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

74 (8) The murder in the first degree was  
75 committed against any peace officer, or fireman  
76 while engaged in the performance of his or her  
77 official duty;

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

82 (10) The murder in the first degree was  
83 committed for the purpose of avoiding,  
84 interfering with, or preventing a lawful arrest  
85 or custody in a place of lawful confinement, of  
86 himself or herself or another;

87 (11) The murder in the first degree was  
88 committed while the defendant was engaged in the  
89 perpetration or was aiding or encouraging  
90 another person to perpetrate or attempt to  
91 perpetrate a felony of any degree of rape,  
92 sodomy, burglary, robbery, kidnapping, or any  
93 felony offense in chapter 195 or 579;

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

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

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

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

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

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

121           3. Statutory mitigating circumstances  
122 shall include the following:

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

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

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

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

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

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

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

          [565.035. 1. Whenever the death penalty  
2 is imposed in any case, and upon the judgment  
3 becoming final in the trial court, the sentence  
4 shall be reviewed on the record by the supreme  
5 court of Missouri. The circuit clerk of the  
6 court trying the case, within ten days after  
7 receiving the transcript, shall transmit the  
8 entire record and transcript to the supreme  
9 court together with a notice prepared by the  
10 circuit clerk and a report prepared by the trial  
11 judge. The notice shall set forth the title and  
12 docket number of the case, the name of the  
13 defendant and the name and address of his  
14 attorney, a narrative statement of the judgment,  
15 the offense, and the punishment prescribed. The  
16 report by the judge shall be in the form of a  
17 standard questionnaire prepared and supplied by  
18 the supreme court of Missouri.]



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

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

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

27           (2) Whether the evidence supports the  
28 jury's or judge's finding of a statutory  
29 aggravating circumstance as enumerated in  
30 subsection 2 of section 565.032 and any other  
31 circumstance found;

32           (3) Whether the sentence of death is  
33 excessive or disproportionate to the penalty  
34 imposed in similar cases, considering both the  
35 offense, the strength of the evidence and the  
36 defendant.

37           4. Both the defendant and the state shall  
38 have the right to submit briefs within the time  
39 provided by the supreme court, and to present  
40 oral argument to the supreme court.

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

47           (1) Affirm the sentence of death; or

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

52           (3) Set the sentence aside and remand the  
53 case for retrial of the punishment hearing. A  
54 new jury shall be selected or a jury may be  
55 waived by agreement of both parties and then the  
56 punishment trial shall proceed in accordance  
57 with this chapter, with the exception that the  
58 evidence of the guilty verdict shall be  
59 admissible in the new trial together with the  
60 official transcript of any testimony and  
61 evidence properly admitted in each stage of the

62 original trial where relevant to determine  
63 punishment.

64 6. There shall be an assistant to the  
65 supreme court, who shall be an attorney  
66 appointed by the supreme court and who shall  
67 serve at the pleasure of the court. The court  
68 shall accumulate the records of all cases in  
69 which the sentence of death or life imprisonment  
70 without probation or parole was imposed after  
71 May 26, 1977, or such earlier date as the court  
72 may deem appropriate. The assistant shall  
73 provide the court with whatever extracted  
74 information the court desires with respect  
75 thereto, including but not limited to a synopsis  
76 or brief of the facts in the record concerning  
77 the offense and the defendant. The court shall  
78 be authorized to employ an appropriate staff,  
79 within the limits of appropriations made for  
80 that purpose, and such methods to compile such  
81 data as are deemed by the supreme court to be  
82 appropriate and relevant to the statutory  
83 questions concerning the validity of the  
84 sentence. The office of the assistant to the  
85 supreme court shall be attached to the office of  
86 the clerk of the supreme court for  
87 administrative purposes.

88 7. In addition to the mandatory sentence  
89 review, there shall be a right of direct appeal  
90 of the conviction to the supreme court of  
91 Missouri. This right of appeal may be waived by  
92 the defendant. If an appeal is taken, the  
93 appeal and the sentence review shall be  
94 consolidated for consideration. The court shall  
95 render its decision on legal errors enumerated,  
96 the factual substantiation of the verdict, and  
97 the validity of the sentence.]

✓