

SECOND REGULAR SESSION

# SENATE BILL NO. 1081

99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR RIZZO.

Read 1st time March 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6685S.011

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## 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.

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Section A. Section 565.020, RSMo, is repealed and two new sections  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

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

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

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

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

5 a. **Schizophrenia;**

- 6           **b. Schizoaffective disorder;**
- 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**  
13 **conditions described in paragraph (a) of this subdivision with which**  
14 **the person has been diagnosed, while not meeting the standard to be**  
15 **found not guilty by reason of mental disease or defect under section**  
16 **552.030, the standard to be found incompetent to stand trial as**  
17 **described in section 552.020, or the standard for mental disease or**  
18 **defect under subdivision (8) of subsection 2 of section 552.015,**  
19 **nevertheless significantly impaired the person's capacity to do one or**  
20 **more of the following:**

- 21           **a. Exercise rational judgment in relation to the person's conduct;**
- 22           **b. Conform the person's conduct to the requirements of law; or**
- 23           **c. Appreciate the nature, consequences, or wrongfulness of the**  
24 **person's conduct.**

25           **(2) A disorder manifested primarily by repeated criminal**  
26 **conduct or attributable solely to the acute effects of voluntary use of**  
27 **alcohol or any other drug of abuse does not, standing alone, constitute**  
28 **a serious mental illness for purposes of this section.**

29           **2. The diagnosis of a person with a condition or conditions**  
30 **described in paragraph (a) of subdivision (1) of subsection 1 of this**  
31 **section may be made at any time prior to, on, or after the day of the**  
32 **commission of the offense or the day on which the person under**  
33 **subsection 3 of this section raises the matter of the person's serious**  
34 **mental illness at the time of the commission of the offense. Diagnosis**  
35 **of the condition or conditions after the date of the commission of the**  
36 **offense does not preclude the person from presenting evidence that the**  
37 **person had a serious mental illness at the time of the commission of the**  
38 **offense or, in the circumstances described in subsection 3, 4, 5, or 6 of**  
39 **this section, from having the benefit of the rebuttable presumption**  
40 **described in such subsections.**

41           **3. A person charged with murder in the first degree may raise**  
42 **the issue of a serious mental illness at the time of the commission of the**

43 offense to exempt himself or herself from eligibility for a sentence of  
44 death.

45 4. (1) If the defense raises the matter of the defendant's serious  
46 mental illness at the time of the commission of the offense, the court  
47 shall, at the request of the state or the defense, order an evaluation of  
48 the accused in accordance with the provisions of this section.

49 (2) The state shall not use any evidence against the defendant  
50 acquired as a result of any evaluation ordered under this section or call  
51 any examiner who performed such an evaluation on the defendant as  
52 a witness against the defendant unless and until the defense presents  
53 such evidence at a hearing on the matter of the defendant's serious  
54 mental illness at the time of the commission of the offense. The state  
55 may then call the examiner and use the information the examiner  
56 obtained at the hearing on this issue.

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

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

66 5. If a person raises the matter of his or her serious mental  
67 illness at the time of the commission of the offense and submits prima  
68 facie evidence that he or she has a serious mental illness as described  
69 in paragraph (a) of subdivision (1) of subsection 1 of this section and  
70 that the condition existed at the time of the commission of the offense,  
71 the prosecution shall have an opportunity to present evidence to  
72 contest the serious mental illness or to rebut the presumption that the  
73 condition, if present, significantly impaired the person's capacity at the  
74 time of the commission of the offense in a manner described in  
75 subparagraph a., b., or c. of paragraph (b) of subdivision (1) of  
76 subsection 1 of this section. The prosecution has the burden of proving,  
77 beyond a reasonable doubt, that the serious mental illness did not exist  
78 at the time of the commission of the offense or, if present, to establish  
79 beyond a reasonable doubt that the serious mental illness did not

80 significantly impair the person's capacity at the time of the commission  
81 of the offense in a manner described in subparagraph a., b., or c. of  
82 paragraph (b) of subdivision (1) of subsection 1 of this section.

83       6. (1) If a person raises the matter of his or her serious mental  
84 illness at the time of the commission of the offense, and the state  
85 contests the application of the exemption based on the information the  
86 defense provides, the defense shall be entitled to a pretrial hearing and  
87 determination on eligibility for the exemption.

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

92       (3) At such a hearing, the defense shall produce some evidence,  
93 from any source, to establish a prima facie case that the defendant  
94 suffered from a serious mental illness, as described in paragraph (a) of  
95 subdivision (1) of subsection 1 of this section. If the defense submits  
96 prima facie evidence that the person had a serious mental illness at the  
97 time of the commission of the offense, it shall be rebuttably presumed  
98 that the condition significantly impaired the person's capacity at the  
99 time of the commission of the offense in a manner described in  
100 subparagraph a., b., or c. of paragraph (b) of subdivision (1) of  
101 subsection 1 of this section.

102       (4) The state may then present evidence to rebut the  
103 presumption and establish, beyond a reasonable doubt, that the  
104 defendant did not suffer from a serious mental illness at the time of the  
105 commission of the offense and that the serious mental illness, if  
106 present, did not substantially impair the capacity of the accused at the  
107 time of the commission of the offense in a manner described in  
108 subparagraph a., b., or c. of paragraph (b) of subdivision (1) of  
109 subsection 1 of this section.

110       (5) If the court finds that the state failed to rebut the  
111 presumption, or the state failed to present evidence to prove, beyond  
112 a reasonable doubt, that the accused did not have a serious mental  
113 illness, or that the state failed to present evidence to prove, beyond a  
114 reasonable doubt, that the serious mental illness, if present, did not  
115 substantially impair his or her capacity at the time of the commission  
116 of the offense, the court shall find that the exemption applies and

117 **direct judgment on the matter of the exemption in favor of the**  
118 **defendant.**

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

126 **7. A person's pleading of not guilty due to mental disease or**  
127 **defect or incapacity to stand trial, or a finding after such a plea that**  
128 **the person does not suffer from mental disease or defect or has**  
129 **capacity to stand trial, does not preclude the person from raising the**  
130 **matter of the person's serious mental illness at the time of the**  
131 **commission of the offense under this section and, if a person so raises**  
132 **that matter, does not limit or affect any of the procedures described in**  
133 **this section or the authority of a court to make any finding described**  
134 **in this section.**

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