

SECOND REGULAR SESSION

# SENATE BILL NO. 758

98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR CHAPPELLE-NADAL.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4563S.011

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## AN ACT

To repeal section 565.035 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 565.035 as enacted by senate bill no. 448, eighty-second general assembly, second regular session, RSMo, and to enact in lieu thereof two new sections relating to racial considerations in death penalty cases.

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

Section A. Section 565.035 as enacted by senate bill no. 491, ninety-  
2 seventh general assembly, second regular session, and section 565.035 as enacted  
3 by senate bill no. 448, eighty-second general assembly, second regular session,  
4 RSMo, are repealed and two new sections enacted in lieu thereof, to be known as  
5 sections 565.035 and 565.045, to read as follows:

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

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

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

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

17 (2) Whether the evidence supports the jury's or judge's finding of a  
18 statutory aggravating circumstance as enumerated in subsection 2 of section  
19 565.032 and any other circumstance found;

20 (3) Whether the sentence of death is excessive or disproportionate to the  
21 penalty imposed in similar cases, considering both the offense, the strength of the  
22 evidence and the defendant;

23 **(4) Whether race was a significant factor in the decision to seek**  
24 **or impose the death penalty or in other decisions to seek or impose the**  
25 **death penalty in the county or judicial circuit in which the defendant**  
26 **was prosecuted or tried or the state at the time the death sentence was**  
27 **sought or imposed.**

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

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

35 (1) Affirm the sentence of death; or

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

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

46 6. There shall be an assistant to the supreme court, who shall be an  
47 attorney appointed by the supreme court and who shall serve at the pleasure of  
48 the court. The court shall accumulate the records of all cases in which the  
49 sentence of death or life imprisonment without probation or parole was imposed  
50 after May 26, 1977, or such earlier date as the court may deem appropriate. The

51 assistant shall provide the court with whatever extracted information the court  
52 desires with respect thereto, including but not limited to a synopsis or brief of the  
53 facts in the record concerning the offense and the defendant. The court shall be  
54 authorized to employ an appropriate staff, within the limits of appropriations  
55 made for that purpose, and such methods to compile such data as are deemed by  
56 the supreme court to be appropriate and relevant to the statutory questions  
57 concerning the validity of the sentence. The office of the assistant to the supreme  
58 court shall be attached to the office of the clerk of the supreme court for  
59 administrative purposes.

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

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2 the judgment becoming final in the trial court, the sentence shall be reviewed on  
3 the record by the supreme court of Missouri. The circuit clerk of the court trying  
4 the case, within ten days after receiving the transcript, shall transmit the entire  
5 record and transcript to the supreme court together with a notice prepared by the  
6 circuit clerk and a report prepared by the trial judge.

7 The notice shall set forth the title and docket number of the case, the name of the  
8 defendant and the name and address of his attorney, a narrative statement of the  
9 judgment, the offense, and the punishment prescribed. The report by the judge  
10 shall be in the form of a standard questionnaire prepared and supplied by the  
11 supreme court of Missouri.

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13 as any errors enumerated by way of appeal.

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16 passion, prejudice, or any other arbitrary factor; and

17 (2) Whether the evidence supports the jury's or judge's finding of a  
18 statutory aggravating circumstance as enumerated in subsection 2 of section  
19 565.032 and any other circumstance found;

20 (3) Whether the sentence of death is excessive or disproportionate to the  
21 penalty imposed in similar cases, considering both the crime, the strength of the

22 evidence and the defendant;

23           **(4) Whether race was a significant factor in the decision to seek**  
24 **or impose the death penalty or in other decisions to seek or impose the**  
25 **death penalty in the county or judicial circuit in which the defendant**  
26 **was prosecuted or tried or the state at the time the death sentence was**  
27 **sought or imposed.**

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29 within the time provided by the supreme court, and to present oral argument to  
30 the supreme court.

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32 similar cases which it took into consideration. In addition to its authority  
33 regarding correction of errors, the supreme court, with regard to review of death  
34 sentences, shall be authorized to:

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37 imprisonment without eligibility for probation, parole, or release except by act of  
38 the governor; or

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

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

58 court shall be attached to the office of the clerk of the supreme court for  
59 administrative purposes.

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

**565.045. 1. No person shall be sentenced to death or executed  
2 under any judgment that was sought or obtained on the basis of race.**

3 **2. Before the first or second stage of trial in which murder in the  
4 first degree is charged without a waiver of the death penalty, a  
5 defendant may file a motion upon the ground that racial considerations  
6 played a significant part in the decision to seek the death penalty. A  
7 defendant who has been sentenced to death on or after August 28, 2016,  
8 may file a motion to set aside the sentence based upon the ground that  
9 racial considerations played a significant part in the decision to seek  
10 or impose the death penalty, and the provisions of sections 547.360 and  
11 547.370 shall apply to such motions. A defendant who was sentenced to  
12 death prior to August 28, 2016, may file a motion to seek relief under  
13 this section by August 28, 2017.**

14 **3. The court shall schedule a hearing on the motion and shall  
15 prescribe a time for the submission of evidence by both parties.**

16 **4. The defendant has the burden of proving, and shall state with  
17 particularity how, the evidence supports a claim that race was a  
18 significant factor in the decision to seek or impose the death  
19 penalty. The state may offer evidence in rebuttal of the claims or  
20 evidence of the defendant, including statistical evidence. The court  
21 may consider evidence of the impact upon the defendant's trial of any  
22 program to eliminate race as a factor in seeking or imposing the death  
23 penalty.**

24 **5. A finding that race was a significant factor in the decision to  
25 seek or impose the death penalty shall be established if the court finds  
26 that race was a significant factor in decisions to seek or impose the  
27 death penalty in the county or judicial circuit in which the defendant  
28 was prosecuted or tried or the state at the time the death sentence was  
29 sought or imposed.**

30           **6. Evidence relevant to establish a finding that race was a**  
31 **significant factor in decisions to seek or impose the death penalty may**  
32 **include statistical evidence of other evidence, including sworn**  
33 **testimony of defense attorneys, prosecuting or circuit attorneys, law**  
34 **enforcement officers, jurors, or other members of the criminal justice**  
35 **system that, irrespective of statutory factors, one or more of the**  
36 **following applies:**

37           **(1) The death penalty was sought or imposed significantly more**  
38 **frequently upon persons of one race than upon persons of another race;**  
39 **or**

40           **(2) Race was a significant factor in decisions to exercise**  
41 **peremptory challenges during jury selection.**

42           **7. If the court finds that race was a significant factor in the**  
43 **decision to seek or impose the death penalty, the court shall order that**  
44 **a death sentence not be sought, or that the death sentence imposed by**  
45 **the judgment shall be vacated and the defendant resentenced to life**  
46 **imprisonment without eligibility for probation, parole, or release**  
47 **except by act of the governor.**

Unofficial  
Bill ✓  
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