

FIRST REGULAR SESSION

SENATE BILL NO. 321

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS DAYS AND BRAY.

Read 1st time February 5, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1297S.011

AN ACT

To amend chapter 565, RSMo, by adding thereto one new section relating to the creation of a death penalty commission.

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

Section A. Chapter 565, RSMo, is amended by adding thereto one new
2 section, to be known as section 565.047, to read as follows:

565.047. 1. A commission on the death penalty is hereby created
2 within the office of administration to consist of ten members: two
3 members from the house of representatives with one from each party,
4 the majority party member shall be appointed by the speaker of the
5 house of representatives and the minority party member shall be
6 appointed by the minority floor leader; two members from the senate,
7 one from each party, the majority party member shall be appointed by
8 the president pro tem and the minority party member shall be
9 appointed by the minority floor leader; a county prosecutor appointed
10 by the Missouri Association of Prosecuting Attorneys and a criminal
11 defense lawyer appointed by the Missouri Association of Criminal
12 Defense Lawyers; the state public defender or his or her designee; the
13 attorney general or his or her designee; a murder victim's family
14 member and a family member of an individual on death row appointed
15 by the director of the department of corrections. Commission members
16 shall be comprised equally of individuals in favor and those opposed to
17 the death penalty. The members of the commission shall serve without
18 compensation, but the members shall be reimbursed for necessary
19 expenses incurred in the work of the commission. The commission
20 shall be appointed and staffed on or before December 1, 2009.

21 **2. The commission on the death penalty shall elect a chair. The**

22 commission shall be assisted in its work by the staff of the Missouri
23 supreme court and the personnel and staff of the state public
24 universities.

25 3. The commission on the death penalty shall hold public
26 hearings throughout the state, calling before it witnesses to testify and
27 allowing other interested citizens to comment on issues relevant to the
28 administration of the death penalty in Missouri.

29 4. The commission shall study all aspects of the death penalty as
30 administered in the state. As part of this study, the commission on the
31 death penalty shall review and analyze all cases in which the death
32 penalty was sought and use a scientific method of random sampling to
33 review and analyze a statistical representation of cases in which
34 charges of first degree murder, second degree murder, or voluntary
35 manslaughter were filed on or after January 1, 1977. The sampling
36 shall have geographic representation across the state based on
37 population distribution. Such review and analyses shall examine all
38 available data concerning:

39 (1) The facts of the offense including mitigating and aggravating
40 circumstances;

41 (2) The county in which the charges were filed;

42 (3) The charges originally filed;

43 (4) The crime for which the defendant was convicted, or to which
44 the defendant entered a plea of guilty or for which the defendant was
45 tried and acquitted;

46 (5) The sentence imposed;

47 (6) The age, race, gender, religious preference, and economic
48 status of the defendant and the victim;

49 (7) Whether evidence exists that the defendant was mentally
50 retarded or mentally ill or both;

51 (8) Whether the defendant had a prior criminal record and
52 detailing that record if one exists;

53 (9) The identity, number, and experience level of defense counsel
54 at trial, appeal, and post conviction;

55 (10) The identity, number, and experience level of trial and
56 appellate prosecutors, including, where appropriate, members of the
57 staff of the attorney general;

58 (11) The body of evidence assembled to obtain a homicide

59 conviction, including physical evidence, eyewitness testimony,
60 informant testimony, etc.;

61 (12) The results of any appellate review;

62 (13) The results of any post-conviction review in state or federal
63 court; and

64 (14) The cost per disposition and implementation of sentence. A
65 cost analysis shall include comparison costs, both direct and indirect,
66 born by county and state governments in the prosecution and defense
67 of the defendant in all homicide cases where a death sentence was
68 sought and in at least an equal number of homicide cases where a death
69 sentence was not sought.

70 5. In considering the experience level of attorneys and the
71 adequacy of resources as described in subdivisions (9) and (10) of
72 subsection 4 of this section, the commission shall consider the
73 experience and training levels required by the Missouri supreme court,
74 the experience and training levels required by the courts and
75 legislatures of other jurisdictions in which the death penalty is
76 imposed, and the recommendations of national associations.

77 6. The review conducted by the commission shall include all such
78 charges filed during the study period.

79 7. The commission shall study whether alternatives to the death
80 penalty exist that would sufficiently ensure public safety and address
81 other legitimate social and penological interests, including the interests
82 of families of victims.

83 8. The commission shall report its findings and recommendations
84 regarding the death penalty, including remedies for any deficiencies
85 found by the commission, to the governor, members of the legislature,
86 and the Missouri supreme court by January 1, 2012.

87 9. The commission shall make recommendations for amendments
88 to the statutes and court rules pertaining to cases in which the death
89 penalty is sought or imposed to provide assurances that:

90 (1) Defendants who are sentenced to death are in fact guilty of
91 first degree murder;

92 (2) Defendants in cases in which the death penalty is sought are
93 provided adequate and experienced counsel and adequate resources for
94 the defense of their cases at trial and at the appellate and post-
95 conviction stages;

96 **(3) Race does not play an impermissible role in determining**
97 **which defendants are sentenced to death;**

98 **(4) Appellate and post-conviction procedures are adequate to**
99 **provide a fair opportunity for the courts of this state to correct errors**
100 **and injustices that occurred at trial in cases in which the death penalty**
101 **is imposed, including but not limited to allowing access to physical**
102 **evidence for later testing and analysis; and**

103 **(5) All prosecutors throughout the state use similar criteria to**
104 **determine whether to seek the death penalty in a case involving**
105 **criminal homicide.**

106 **10. No execution of a defendant shall take place between the**
107 **effective date of this section and January 1, 2013.**

108 **11. During the moratorium period, the special procedures in**
109 **cases of first degree murder provided in sections 565.030 to 565.040 and**
110 **any other proceedings related to capital cases, including motions for**
111 **post-conviction relief, shall continue to be operative and shall proceed**
112 **as if no such moratorium were in place, except that no day certain for**
113 **execution shall be appointed that falls during the moratorium.**

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