

FIRST REGULAR SESSION

# SENATE BILL NO. 338

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Read 1st time February 24, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1741S.011

## AN ACT

To repeal section 565.035, RSMo, and to enact in lieu thereof one new section relating to supreme court records.

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

Section A. Section 565.035, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 565.035, 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;

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

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. Both the defendant and the state shall have the right to submit briefs  
24 within the time provided by the supreme court, and to present oral argument to  
25 the supreme court.

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

30 (1) Affirm the sentence of death; or

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

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

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

55 7. In addition to the mandatory sentence review, there shall be a right of

56 direct appeal of the conviction to the supreme court of Missouri. This right of  
57 appeal may be waived by the defendant. If an appeal is taken, the appeal and  
58 the sentence review shall be consolidated for consideration. The court shall  
59 render its decision on legal errors enumerated, the factual substantiation of the  
60 verdict, and the validity of the sentence.

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