

SECOND REGULAR SESSION

# SENATE BILL NO. 1391

## 103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

5762S.01I

KRISTINA MARTIN, Secretary

### AN ACT

To repeal section 547.370, RSMo, and to enact in lieu thereof one new section relating to the death penalty.

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

Section A. Section 547.370, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 547.370, to read as follows:

547.370. 1. [When a motion is filed as provided in  
2 section 547.360 to set aside a sentence of death,] **Whenever**  
3 **the death penalty is imposed in any case**, the **circuit** court  
4 shall, **at the time it imposes sentence and judgment**, find on  
5 the record whether the [movant] **defendant** is indigent. If  
6 the [movant] **defendant** is indigent, the court shall, **without**  
7 **delay**, cause to be appointed two counsel to represent the  
8 [movant] **defendant in the preparation and litigation of a**  
9 **defendant's motion under Missouri supreme court rule 24.035**  
10 **or 29.15**. If [movant] **the defendant** seeks to reject the  
11 appointment of counsel, the court shall find on the record,  
12 after a hearing[,] if necessary, whether the [movant]  
13 **defendant** is able to competently decide whether to accept or  
14 reject the appointment and whether the [movant] **defendant**  
15 rejected the offer with the understanding of its legal  
16 consequences. Unless the [movant] **defendant** is so competent  
17 and understands the legal consequences, [movant] **defendant**

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

18 shall not be permitted to reject the appointment of  
19 counsel. **If the defendant is not indigent, the court may**  
20 **enter an order denying the appointment of counsel.**

21 2. All counsel appointed as provided in this section  
22 shall be members of The Missouri Bar or shall be admitted to  
23 practice in the particular case as provided in Missouri  
24 supreme court rule 9. At least one of the counsel shall  
25 meet the following qualifications:

26 (1) Have attended and successfully completed within  
27 two years immediately preceding the appointment at least  
28 twelve hours of training or educational programs on the  
29 postconviction phase of a criminal case and federal and  
30 state aspects of cases in which the death penalty is sought;  
31 and

32 (2) Have at least three years litigation experience in  
33 the field of criminal law **and three years litigation**  
34 **experience in the field of postconviction law;** and

35 (3) Have participated as counsel or co-counsel to  
36 final judgment in at least five postconviction motions  
37 involving class A felonies in either state or federal trial  
38 courts; **[and]**

39 (4) Have participated in either state or federal court  
40 as counsel or co-counsel to final judgment in at least:

41 (a) Three felony jury trials; or  
42 (b) Five direct criminal appeals in felony cases; **and**

43 (5) **Have been a member of the Missouri Bar for a**  
44 **period of at least five years.**

45 Upon a showing of good cause, the circuit court may appoint  
46 other counsel whose background, knowledge, or experience  
47 would otherwise enable the counsel to properly represent the  
48 defendant in any motion made under Missouri supreme court

49 rule 24.035 or 29.15, with due consideration of the  
50 seriousness of the penalty and the unique and complex nature  
51 of the litigation.

52 Counsel shall certify to the state public defender in such  
53 form as the defender may require that counsel meets the  
54 qualifications of this section prior to filing counsel's  
55 entry of appearance in the case.

56 3. Counsel appointed to represent the [movant]  
57 **defendant** shall not have represented the [movant] **defendant**  
58 at trial [or on], and shall not represent the defendant in  
59 the direct appeal therefrom.

60 4. As to any counsel appointed as provided in this  
61 section, the state public defender shall provide counsel  
62 with reasonable compensation and shall provide reasonable  
63 and necessary litigation expenses.

64 5. This section shall apply whenever the death penalty  
65 is imposed in any case and to any motions under Missouri  
66 supreme court rule 24.035 or 29.15 filed by a defendant  
67 challenging a sentence of death.

68 6. The state shall comply with any additional  
69 requirements in 28 U.S.C. Section 2261 and 2265 and 28 CFR  
70 Section 26.22 that are not specifically contained in this  
71 section.

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